Reversed 15-826

Fuller & Write

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 407. 77-82

THE PITTSBURGH, FORT WAYNE AND CHICAGO RAILWAY COMPANY

vs.

THE COMMONWEALTH OF PENNSYLVANIA.

IN ERROR TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA.

FILED DECEMBER 14, 1870.

Dec. 2, 1872

SUPREME COURT OF THE UNITED STATES.

No. 407.

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IN ERROR TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA.

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1 The answer of the justices of the supreme court of the State of Pennsylvania to the writ of error from the Supreme Court of the United States hereunto annexed as follows, to wit:

2 ***Specifications of objection to the settlement of the auditor general and state treasurer of the State of Pennsylvania, against the Pittsburg, Fort Wayne & Chicago Railway Company for tax on loans.***

STATE OF PENNSYLVANIA,
Auditor General's Office:

In the matter of the account of the Pittsburgh, Fort Wayne and Chicago Railway Company with the Commonwealth, for tax on loans as per ac't of 30th April, 1864, settled by the auditor general and state treasurer on the 24th and 27th of January, 1868, and showing a balance, or amount, due the Commonwealth of $14,510 11.

The Pittsburgh, Fort Wayne and Chicago Railway Company hereby appeals to the court of common pleas of Dauphin County from the settlement made by the auditor general and state treasurer in the above-mentioned matter, and does hereby specify the following objections to the said settlement, to wit:

1. It does not appear that all the bonds issued by the said company are taxed, or taxable, by any law of the State.

2. It does not appear that any of the said bonds are so taxed, or taxable.

3. The act of 30th April, 1864, § 3, (P. L., 219,) applies only to bonds "on which, by the laws of the Commonwealth, a State tax is im-
3 posed," and it does not appear that any tax is imposed on the bonds taxed in the settlement appealed from.

4. The said company cannot collect the tax from the bondholders, because the bonds are all issued with interest coupons payable to bearer in the city of New York, (as appears by a copy or form of the bonds hereto annexed,) and the said company cannot know which of the said coupons are subjected to the said tax.

In testimony whereof the said company have hereunto set their corporate seal, and the hand of George W. Cass, their president, this nineteenth day of March, 1868.

SEAL OF THE PITTS'BG, F'T WAYNE & CHICAGO R'WAY CO'Y.

G. W. CASS, *Pres't.*
F. M. HUTCHINSON, *Se'cy.*

Counsel for the Co.,
W. H. LOWRIE.

(Endorsed as follows:)

4 *Pittsburg, Fort Wayne & Chicago Railway Company, James P. Failey, auditor, in account with the Commonwealth of Pennsylvania, Dr.*

For tax on loans as per act of April 30, 1864.

1864. Average funded debt, $12,286,500 00; tax at the rate of 3 mills per annum, for 8 mo's, from April 30 to Dec. 31, 1864, upon $\frac{50}{469}$ parts of the above amount, representing the proportion of the road within the State of Penn'a $2,619 72

defendants, on the 27th day of January, A. D. 1868, at the county of Dauphin aforesaid, were indebted to the said plaintiff in the sum of fourteen thousand five hundred & ten $\frac{41}{100}$ dollars, lawful money of the United States, on an account examined, adjusted, settled, and signed by the auditor general of this Commonwealth, and duly entered in the books of his office, as authorized and required by law, on the day and year last aforesaid, in which a certain sum of money, to wit, the sum last aforesaid, is due and owing the said plaintiff from the said defendants, with interest thereon at the rate of twelve per centum per annum from and after the expiration of one month from the day upon which the said account was so as aforesaid examined, adjusted, settled, and signed by the auditor general of this Commonwealth, for tax on loans per act of April 30th, 1864, which said account was, on the 27th day of January, A. D. 1868, submitted to, revised, and approved by the state treasurer, and a copy thereof, within thirty days thereafter, sent by the said auditor general, under his hand and seal of office, to the said defendants, and which yet remains in full force against the said defendants and unappealed from; whereby, and by force of the statute in such case made and provided, an action hath accrued to the said plaintiff to demand and have of and from the said defendants a certain sum of money, to wit, the sum mentioned and ascertained to be due to this Commonwealth in the said account so as aforesaid examined, adjusted, settled, and signed by the auditor general of this Commonwealth, parcel of the said sum above demanded. And being so indebted, the said defendants afterwards, to wit, on the day and year aforesaid, at the county aforesaid, promised to pay to the said plaintiff, on request, the said last-mentioned sum of money:

And whereas, also, the said defendants, on the day and year in the first count first mentioned, at the county aforesaid, were indebted to the said plaintiff in a certain further sum of money, to wit, the sum mentioned and ascertained to be due to this Commonwealth in the said account in the first count mentioned for money then and there had
10 and received by the said defendants to and for the use of the said plaintiff. And, also, a certain further sum of money, to wit, the sum last aforesaid, on an account settled and entered by the auditor general of this Commonwealth, against the said defendants, on the day and year in the first count mentioned, for tax on loans per act of April 30, 1864, and approved by the state treasurer on the day and year in the first count mentioned.

And whereas, afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, the said defendants, in consideration of the premises, promised to pay the two last-mentioned several sums of money respectively to the said plaintiff on request, yet the said defendants have disregarded their said promises, and, although often requested so to do, have not as yet paid any of the said several sums of money or any part thereof, to the damage of the said plaintiff of one hundred thousand dollars, and therefore she brings suit, &c.

JAMES W. M. NEWLIN,
Deputy Attorney General,
For B. H. BREWSTER,
Att'y Gen'l.

(Endorsed:) Commonwealth of Pennsylvania vs. Pittsburgh, Fort Wayne & Chicago Railroad Company. No. 296. April term, 1868. Narr. and copy of account. Filed April 3, 1868.

11 In the court of common pleas of Dauphin County. April T., 1868.

THE COMMONWEALTH OF PENNSYLVANIA
vs.
THE PITTSBURGH, FORT WAYNE AND CHICAGO Railway Company. } No. 296.

And now, to wit, April 4, 1868, defendant pleads, "Nil debit."

J. W. SIMONTON,
Att'y for Def't.

12 In the court of common pleas of Dauphin County, Penn'a. April T., 1868.

THE COMMONWEALTH OF PENNSYLVANIA
vs.
THE PITTSBURGH, FORT WAYNE & CHICAGO R. R. } No. 296. Appeal.

Plea, "Nil debit."

Notes of trial and charge of the court.

J. M. Forster sworn: "This is the return of the company for the year 1867." Read, as follows:

13 (Copy.)

Report of the debt, and interest paid thereon, of the Pittsburgh, Fort Wayne & Chicago R'way Company for the year ending December 31st, 1867, with the date and amount of the several payments during the period aforesaid.

Construction bonds P., F. W. & C. R. R. Co.:			
December 31, 1867, $100,000 00, 7 %.....			$7,000 00
Interest payable semi-annually, & due Jan. & July.			
First mortgage bonds:			
December 31, 1867, $5,250,000 00, 7 %.....			367,500 00
Interest payable monthly.			
Second mortgage bonds:			
December 31, 1867, $5,160,000 00, 7 %.....			361,200 00
Interest payable monthly.			
Third mortgage bonds:			
December 31, 1867, $2,000,000, 7 %.....			140,000 00
Interest payable semi-annually, & due Jan. & July.			
Bridge bonds Ohio & Penn'a R. R. Co.:			
Jan'y 1, 1867, $158,500 00.			
May 31, " 155,500, 7 %.....		5,442 50	
June 30, " 154,500, 7 %.....		5,407 50	
Dec. 31, " 153,000.			
			10,850 00
Total.....			$886,550 00

Interest payable semi-annually, & due May & Nov.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Personally appeared before me, a notary public in and for the county

aforesaid, Ja's P. Farley, auditor of the Pittsburgh, F't Wayne & Chicago Railway Company, who, being duly sworn according to law, did depose and say that the above report is just and true, according to the best of his knowledge and belief.

J. P. FARLEY, *Auditor.*

Sworn and subscribed before me this 22nd day of Jan'y, A. D. 1868.

THO'S M. BLAIR,
Notary Public.

14 Report from April 30, 1864, to Dec'r 31, 1866, sworn to July 2, 1867, read as follows:

15 (Copy.)

Report of the debt bearing interest of the Pittsburgh, Fort Wayne & Chicago Railway Company during the period from April 30th, 1864, to December, 1866, and the rate per cent. per annum of the interest thereon, and the dates and amount of the several payments of interest during the period aforesaid.

		Debt.	Rate.	Interest paid.
1864.	Construction bonds P., F. W. & C. R. R. Co.:			
Ap'l 30.....	Do	100,000 00	7 %	17,500 00
1866.				
Dec. 31.....	Do	100,000 00	.....	.....
	Interest payable semi-annually & due Jan. & July.			
1864.	Chicago depot bonds:			
Ap'l 30.....	Do	59,500 00	6 %	5,355 00
1866.				
Dec'r 31....	Do	.....	.....	.....
	Interest payable semi-annually & due May & Nov. Redeemed May 30th, 1865.			
1864.	First mortgage bonds:			
Ap'l 30.....	Do	5,250,000 00	7 %	980,000 00
1866.				
Dec'r 31....	Do	5,250,000 00	.....	.....
	Interest payable monthly.			
1864.	Second mortgage bonds:			
Ap'l 30.....	Do	5,160,000 00	7 %	.....
1866.				
Dec. 31.....	Do	5,160,000 00	.....	963,200 00
	Interest payable monthly.			
1864.	Third mortgage bonds:			
Ap'l 30.....	Do	1,386,500 00	7 %	.....
July 1.....	Do	1,672,000 00	"	58,520 00
1865.				
Jan'y 1.....	Do	2,000,000 00	"	70,000 00
July 1.....	Do	2,000,000 00	"	70,000 00
1866.				
Jan'y 1.....	Do	2,000,000 00	"	70,000 00
July 1.....	Do	2,000,000 00	"	70,000 00
Dec'r 31....	Do	2,000,000 00	"	.....
	Interest payable semi-annually & due Jan'y & July.			
1864.	Bridge bonds O. & P. R. R. Co.			
Ap'l 30.....	Do	188,000 00	7 %	6,580 00
Nov. 30.....	Do	187,500 00	"	6,562 50
1865.				
May 30.....	Do	183,500 00	"	6,422 50
Nov. 30.....	Do	163,500 00	"	5,722 50
1866.				
May 30.....	Do	163,500 00	"	5,722 50
Nov. 30.....	Do	162,500 00	"	5,687 50
Dec. 31.....	Do	158,500 00	"	.....
	Interest payable semi-annually & due May & November.			

16 STATE OF PENNSYLNANIA,
County of Allegheny, ss:

Personally appeared before me, a notary public in and for the county

aforesaid, J. P. Farley, auditor of the Pittsburgh, Fort Wayne & Chicago Railway Company, who, being duly sworn according to law, did depose and say that the above report is just and true, according to the best of his knowledge and belief.

J. P. FARLEY, *Auditor.*

Sworn and subscribed before me this 2nd day of July, A. D. 1867.

T. M. BLAIR,
Notary Public.

17 Settlement dated Jan. 27, 1868, read as follows:

Pittsburgh, Fort Wayne & Chicago Railway Co., James P. Farley, auditor, in account with the Commonwealth of Pennsylvania, Dr.

For tax on loans as per act of April 30, 1864.

1864.	Average funded debt $12,286,500 00; tax at the rate of 3 mills per annum, for 8 mo's, from April 30 to Dec. 31, 1864, upon $\frac{50}{469}$ parts of the above amount representing the proportion of the road within the State of Penn'a	$2,619 72
1865.	Chicago depot bonds $59,500 00; tax 3 mills, for 5 months, on $\frac{50}{469}$ parts	7 92
"	Average funded debt $12,688,000 00; tax 3 mills on $\frac{50}{469}$ parts	4,057 99
1866.	Average funded debt $12,671,500 00; tax 3 mills on $\frac{50}{469}$ parts	4,052 41
1867.	Average funded debt $12,665,125 00; tax 3 mills on $\frac{50}{469}$ parts	4,050 67
		14,789 01
	Treasurer's commissions	278 90
		14,510 11
	Due Commonwealth	14,510 11

AUDITOR GENERAL'S OFFICE,
Harrisburg, Jan'y 24, 1868.

Settled and entered.

D. C. MAURER,
For J. F. Hartranft, Auditor General.

TREASURY OFFICE, PA.,
Harrisburg, Jan'y 27, 1868.

Approved.

M. H. TAGGART,
For William H. Kemble, State Treasurer.

AUDITOR GENERAL'S OFFICE,
Harrisburg, April 2nd, 1868.

I hereby certify that the above is a true copy of the original remaining on file in this department.

Witness my hand and the seal of office the day and year aforesaid.

D. C. MAURER,
For Auditor General.

18 Total, $14,789 01. Commissions deducted, $278 90.

Witness: "That commission should not have been allowed; is only allowed for prompt payment."

Plaintiff closes.

19 *Defence.*

Specifications of appeal read, as follows:

STATE OF PENNSYLVANIA, *ss:*
Auditor General's Office.

In the matter of the account of the Pittsburgh, Fort Wayne and Chicago Railway Company with the Commonwealth, for tax on loans, as per act of 30th April, 1864, settled by the auditor general and State treasurer on the 24th & 27th of January, 1868, and showing a balance or amount due the Commonwealth of $14,510 11.

The Pittsburgh, Fort Wayne & Chicago Railway Company hereby appeals to the court of common pleas, of Dauphin County, from the settlement made by the auditor general and state treasurer in the above-mentioned matter, and does hereby specify the following objections to the said settlement, to wit:

1. It does not appear that all the bonds issued by the said company are taxed or taxable by any law of the State.

2. It does not appear that any of the said bonds are so taxed or taxable.

3. The act of 30th April, 1864, s. 3, (P. L., 219,) applies only to
20 bonds "on which, by the laws of the Commonwealth, a State tax is imposed," and it does not appear that any tax is imposed on the bonds taxed in the settlement appealed from.

4. The said company cannot collect the tax from the bondholders, because the bonds are all issued with interest coupons, payable to bearer in the city of New York, (as appears by a copy or form of the bond hereto annexed,) and the said company cannot know which of the said coupons are subject to the said tax.

In testimony whereof the said company have hereunto set their corporate seal, and the hand of George W. Cass, their president, this 19th day of March, 1868.

SEAL OF PITTSBURGH, F'T WAYNE & CHICAGO R. W. CO.

G. W. CASS, *Pres't.*
F. M. HUTCHINSON, *Sec'y.*

Counsel for the Co.,
W. H. LOWRIE.

Filed 27 March, 1868.

21 Decrees of the U. S. circuit court for Ohio, Pennsylvania, Indiana, and Illinois, decreeing sale offered as follows:

Decree entered June 10, 1861.

United States circuit court, northern district of Ohio.

CHARLES MORAN, LOUIS A. VON HOFFMAN, et al., *vs.* OHIO & PENNSYLVANIA RAILROAD COMPANY, et al. } No. 813. In chancery.

The defendants still failing to plead, answer, or demur to the com-

plainants' bill of complaint, on motion of the complainants, by their counsel, it is ordered by the court, that said bill of complaint be taken as confessed by the defendants, and thereupon, the cause came on to be heard on the bill of complaint, exhibits therewith filed, documentary evidences and admissions of the parties by their council in open court. On consideration whereof, the court doth find the equity of the case to be with the complainants, and that all and singular the allegations and charges in the bill of complaint contained are true; and particularly—

1st. That the said "Ohio and Pennsylvania Railroad Company" was incorporated and organized pursuant to the acts of the general assembly of the States of Ohio and Pennsylvania, as alleged in the bill of complaint; that it located its road in conformity to said acts, from the town of Crestline, in the State of Ohio, to the city of Pittsburgh, in the State of Pennsylvania; and thereafter, for the purposes in the bill of complaint mentioned, made the said two mortgages, copies of which are exhibited with the bill, the one marked A, the other marked B; the former upon so much of its road as extends from Massillon, in the State of Ohio, east of Pittsburgh; the latter upon so much of its road as extends west from Massillon to Crestline; that John J. Palmer, the grantee in trust of each of said mortgages, died before the commencement of this suit leaving said trust vacant, and that the same is still vacant; that the complainants, Charles Moran and Louis A. Von Hoffman, severally, before and at the time of the commencement of this suit, were and still are the owners and holders of bonds of said Ohio and Pennsylvania Railroad Company, secured by each of the aforesaid mortgages, and by reason of the death of said trustee and the vacancy of said trust, have good right in equity, to intervene as complainants in this behalf. That said mortgages were duly recorded according to law, as charged in the bill, and are valid conveyances for the purpose therein mentioned, and as such, have each a paramount lien upon the road and its equipments, property and franchises, thereby severally conveyed, and are entitled to priority in the distribution of the proceeds of any sale thereof to be made pursuant to this decree over any other lien or claim against the same, subject only to the payment of an equitable part of the necessary costs and expenses of this suit and other equitable charges provided to be paid by the interlocutory orders heretofore made in this case, so far as the same shall not otherwise be paid or provided for; said proceeds accruing under each of said mortgages, after defraying costs, expenses, and equitable charges as aforesaid, if not adequate to fully pay the outstanding bonds and interest coupons, secured by said mortgages, severally, to be applied and distributed pro rata in payment on the same. And the court doth find that bonds to the amount of 1,000,000 dollars of principal remain outstanding, secured by said first-named mortgage, (Exhibit A,) and that there remains due for interest thereon to the first day of July, A. D. 1861, the sum of $303,373 70; which sum is made up as follows:

22

Coupons due January 1, 1858	$31,990 00	
Interest on same to July 1, 1861	7,837 55	
		$39,827 55
Coupons due July 1, 1858	31,990 00	
Interest to same date	6,717 90	
		38,707 90
Coupons due January 1, 1859	31,990 00	
Interest to same date	5,598 25	
		37,588 25

Coupons due July 1, 1859	35,000 00	
Interest to same date	4,900 00	
		39,900 00
Coupons due January 1, 1860	35,000 00	
Interest to same date	3,675 00	
		38,675 00
Coupons due July 1, 1860	35,000 00	
Interest to same date	2,450 00	
		37,450 00
Coupons due January 1, 1861	35,000 00	
Interest to same date	1,225 00	
		36,225 00
Coupons due July 1, 1861		35,000 00
		$303,373 70

23 And that bonds to the amount of 750,000 dollars of principa. remain outstanding, secured by said second mortgage, (Exhibit B,) and that there remains due for interest thereon to the first day of July, A. D. 1861, the sum of $235,725; which sum is made up as follows:

Coupons due January 1, 1858	$26,250 00	
Interest to July 1, 1861	6,431 25	
		$ 32,681 25
Coupons due July 1, 1858	26,250 00	
Interest to same date	5,512 50	
		31,762 50
Coupons due January 1, 1859	26,240 00	
Interest to same date	4,593 75	
		30,843 75
Coupons due July 1, 1859	26,250 00	
Interest to same date	3,675 00	
		29,925 00
Coupons due January 1, 1860	26,250 00	
Interest to same date	2,756 25	
		29,006 25
Coupons due July 1, 1860	26,250 00	
Interest to same date	1,837 50	
		28,087 50
Coupons due January 1, 1861	26,250 00	
Interest to same date	918 75	
		27,168 75
Coupons due July 1, 1861		26,250 00
		$235,725 00

2d. The court doth find that the Ohio and Pennsylvania Railroad Company, on the 30th day of June, 1856, made a third mortgage on the entire line of its road from Pittsburgh to Crestline, to the complainant, John Ferguson, and the defendant, Tho's Scott, as trustees, as stated in the bill, and that said mortgage is a valid lien upon the property therein specified, and that the bonds and unpaid coupons thereon and thereby secured, are entitled to be fully paid, so far as the same are outstanding, out of any proceeds of the sale of said mortgaged property to be made as

aforesaid, which may remain after payment of the said first and second mortgages in this decree above mentioned; or if such remaining proceeds shall be inadequate to fully pay said bonds and coupons, that then, and in such case, said proceeds are distributable in payment of said bonds and coupons pro rata in proportion to their respective amounts. And the court doth find that the aggregate amount of said bonds outstanding at the date of this decree is the sum of $1,987,000 of principal, and that there is due for interest thereon to the first day of July, A. D. 1861, the sum of $510,872 22; which sum is made up as follows:

Coupons due April 1, 1858	$59,710 00		
Interest to July 1, 1861	13,584 02		
			$73,294 02
Coupons due October 1, 1858	59,710 00		
Interest to July 1, 1861	11,494 17		
			71,204 17
24 Coupons due April 1, 1859	59,710 00		
Interest to July 1, 1861	9,404 32		
			69,114 32
Coupons due October 1, 1859	69,195 00		
Interest to July 1, 1861	8,476 38		
			77,671 38
Coupons due April 1, 1860	69,545 00		
Interest to July 1, 1861	6,085 19		
			75,630 19
Coupons due October 1, 1860	69,545 00		
Interest to July 1, 1861	3,651 11		
			7,3196 11
Coupons due April 1, 1861	69,545 00		
Interest to July 1, 1861	1,217 03		
			70,762 03
Total			$510,872 22

3d. The court doth further find that the said Ohio and Pennsylvania Railroad Company did, as alleged in the bill of complaint, become consolidated with the Ohio and Indiana Railroad Company and the Fort Wayne and Chicago Railroad Company, under the corporate name of the Pittsburgh, Fort Wayne and Chicago Railroad Company, and that said consolidated company was fully organized on the 30th day of July, 1856, under and in pursuance of the contract, a copy of which, marked (Exhibit C,) is filed with the bill; and that by virtue of said contract and consolidation, and of the statutory provisions concerning the same, the said Pittsburgh, Fort Wayne and Chicago Railroad Company became liable to pay the debts and liabilities of the said original companies so consolidated, and amongst the rest the bonds and interest coupons aforesaid of the said Ohio and Pennsylvania Railroad Company, secured by the said several mortgages of said last-named company. That, in addition to the said mortgages, there existed at the time of said consolidation, and still exist, the following named other mortgages, on that portion of the road of said consolidated company which lies between Crestline and Chicago, in each of which is also included other property, for the particulars whereof, reference is made to said other mortgages and the records thereof, namely:

1st. One mortgage made by the said Ohio and Indiana Railroad Company, known as the first mortgage of said company, upon the entire

line of said company's road from Crestline, in the State of Ohio, to Fort Wayne, in the State of Indiana, to secure the payment of one million of dollars of bonds of said company, dated August 1st, 1852, with interest at the rate of seven per centum per annum, payable semi-annually, on the first days of February and August of each year; the principal thereof maturing August 1st, 1872; all of which bonds are outstanding, and there is due for interest thereon to the first day of July, A. D. 1861, the sum of $265,859 26; made up as follows:

Coupons due February 1, 1858	$31,675 00	
Interest to July 1, 1861	7,575 60	
		$39,250 60
Coupons due August 1, 1858	31,675 00	
Interest to July 1, 1861	6,466 98	
		38,141 98
Coupons due February 1, 1859	31,675 00	
Interest to July 1, 1861	5,358 36	
		37,033 36
Coupons due August 1, 1859	35,000 00	
Interest to July 1, 1861	4,695 73	
		39,695 83
Coupons due February 1, 1860	35,000 00	
Interest to July 1, 1861	3,470 83	
		38,470 83
Coupons due August 1, 1860	35,000 00	
Interest to July 1, 1861	2,245 83	
		37,245 83
Coupons due February 1, 1861	35,000 00	
Interest to July 1, 1861	1,020 83	
		36,020 83
Total		$265,859 26

Which said mortgage was duly recorded according to law, and is a valid conveyance for the purposes therein mentioned, and is the paramount lien upon the property and franchises thereby conveyed, and entitled to priority in the distribution of the proceeds of any sale thereof to be made under this decree over any other lien or claim against the same, subject only to the payment of an equitable part of the costs and expenses of this suit, and other equitable charges provided to be paid by the interlocutory orders heretofore made in this case, so far as the same shall not otherwise be paid or provided for; said proceeds, after defraying costs, expenses, and equitable charges as aforesaid, if not adequate to fully pay the outstanding bonds and interest coupons secured by said mortgage, to be distributed and applied pro rata in payment of the same.

2d. One mortgage made by said Ohio and Indiana Railroad Company, known as the second mortgage of said company upon its said road, to secure the payment of $500,000 of the bonds of said company, of which $112,000 have been canceled, and $8,000 have been taken up by receiver as collaterals to debt paid by him, which he now holds, leaving $380,000 thereof outstanding, dated October 1, 1853, bearing interest at the rate of seven per centum per annum, payable semi-annually, on the first days of April and October of each year, maturing October 1st, 1873, on which bonds there is interest due and unpaid to the 1st day of July, 1861, the sum of $87,100 25, made up as follows:

Coupons due April 1, 1858	$8,435 00	
Interest to July 1, 1861	1,918 97	
		$10,353 97
Coupons due October 1, 1858	8,435 00	
Interest to July 1, 1861	1,623 75	
		10,058 75
Coupons due April 1, 1859	8,435 00	
Interest to July 1, 1861	1,328 53	
		9,763 53
Coupons due October 1, 1859	13,300 00	
Interest to July 1, 1861	1,629 25	
		14,929 25
Coupons due April 1, 1860	13,300 00	
Interest to July 1, 1861	1,163 75	
		14,463 75
Coupons due October 1, 1860	13,300 00	
Interest to July 1, 1861	698 25	
		13,998 25
Coupons due April 1, 1861	13,300 00	
Interest to July 1, 1861	232 75	
		13,532 75
Total		$87,100 25

Which said mortgage was duly recorded according to law, and is a valid conveyance for the purposes therein mentioned, and is the second lien upon the proceeds of any sale to be made as aforesaid of the property conveyed thereby, and entitled to priority in distribution of any residue of said proceeds which may remain after said first mortgage above named upon said property shall be fully satisfied; and if the same be not adequate to fully pay said outstanding bonds and interest coupons secured by said second mortgage said residue of said proceeds shall be distributed and applied pro rata in payment thereof.

3d. One mortgage made by said Ohio and Indiana Railroad Company, known as the third mortgage of said company upon its said road to secure the payment of $250,000 of the bonds of said company, of which $233,000 have been canceled, leaving $17,000 thereof outstanding, dated September 1, 1854, bearing interest at the rate of seven per centum per annum, payable semi-annually on the first days of March and September of each year, and maturing September 1st, 1874, on which bonds there is interest due and unpaid to the first day of July, 1861, the sum of $2,560 56, made up as follows:

Coupons due September 1, 1859	$595 00	
Interest to July 1, 1861	76 37	
		$671 37
Coupons due March 1, 1860	595 00	
Interest to July 1, 1861	55 55	
		650 55
Coupons due September 1, 1860	595 00	
Interest to July 1, 1861	34 73	
		629 73
Coupons due March 1, 1861	595 00	
Interest to July 1, 1861	13 91	
		608 91
Total		$2,560 56

27 Which said mortgage was duly recorded according to law, and is a valid conveyance for the purposes therein mentioned, and is the third lien upon the proceeds of any sale to be made as aforesaid, of the property conveyed thereby, and entitled to priority in distribution of any residue of said proceeds which may remain after said first and second mortgages above-named shall be fully satisfied; and if the same be not adequate to fully pay said outstanding bonds and interest coupons secured by said third mortgage, said residue of proceeds shall be distributed and applied pro rata in payment thereof. Of each and all of which, said three mortgages last above-named, the said plaintiff, John Ferguson, is grantee in trust.

4th. One mortgage made by the said Fort Wayne and Chicago Railroad Company, upon the entire line of said company's road, from Fort Wayne, in the State of Indiana, to the termination thereof at the city of Chicago, in the State of Illinois, to secure the payment of $1,250,000 of bonds of said company, dated July 1st, 1853, with interest at the rate of seven per centum per annum, payable semi-annually, on the first days of January and July of each year, the principal thereof maturing July 1st, 1873; all of which bonds are outstanding, and there is due for interest thereon to the first day of July, A. D. 1861, $370,260 10, made up as follows:

Coupons due January 1, 1858	$37,520 00	
Interest to July 1, 1861	9,192 40	
		$46,712 40
Coupons due July 1, 1858	37,520 00	
Interest to July 1, 1861	7,879 20	
		45,399 20
Coupons due January 1, 1859	37,520 00	
Interest to July 1, 1861	6,566 00	
		44,086 00
Coupons due July 1, 1859	43,750 00	
Interest to July 1, 1861	6,125 00	
		49,875 00
Coupons due January 1, 1860	43,750 00	
Interest to July 1, 1861	4,593 75	
		48,343 75
Coupons due July 1, 1860	43,750 00	
Interest to July 1, 1861	3,062 50	
		46,812 50
Coupons due January 1, 1861	43,750 00	
Interest to July 1, 1861	1,531 25	
		45,281 25
Coupons due July 1, 1861		43,750 00
Total		$370,260 20

Of which said mortgage the plaintiff, John Ferguson, is grantee in trust; and the same was duly recorded according to law, and is a valid conveyance for the purposes therein mentioned, and is the paramount lien upon the property and franchises thereby conveyed, and entitled to priority in the distribution of the proceeds of any sale thereof to
28 be made under this decree over any other lien or claim against the same, subject only to the payment of an equitable part of the costs and expenses of this suit, and other equitable charges provided to

be paid by the interlocutory orders heretofore made in this case, so far as the same shall not otherwise be paid or provided for; said proceeds, after defraying costs, expenses and equitable charges as aforesaid, if not adequate to fully pay the outstanding bonds and interest coupons secured by said mortgage, to be distributed and applied pro rata in payment of the same.

And the court doth find that the said consolidated company, the Pittsburgh, Fort Wayne and Chicago Railroad Company is, by virtue of said contract of consolidation and the statutory provisions concerning the same, bound and liable to pay the principal and interest, due and to become due, of the bonds of the said Ohio and Indiana Railroad Company, and of the said Fort Wayne and Chicago Railroad Company, severally specified in and secured to be paid by the said four mortgages last above-mentioned, and that said consolidated company is in default by the non-payment of the several amounts of interest in arrear and unpaid upon said four last above-named mortgages, and by the non-payment of the several amounts of interest in arrear and unpaid upon the above-named bonds and mortgages of the Ohio and Pennsylvania Railroad Company, and that said consolidated company by failing to pay said several amounts of interest, has violated and broken its agreement in that respect in said contract of consolidation contained.

3d. The court further doth find that the said Pittsburgh, Fort Wayne and Chicago Railroad Company, after it became organized under said contract of consolidation as aforesaid, to wit, on the first day of January, 1857, executed and delivered to the complainants, John Ferguson and Thomas E. Walker, as grantees in trust thereof, a mortgage upon the entire line of its road, from Pittsburgh to Chicago, with the equipment, property and franchises owned and thereafter to be acquired by said company, for the use of said road in operating the same, as in said mortgage, remaining of record in the recorder's offices, where the same has been recorded in counties through which the line of said road passes, (to which records reference is here made for the particulars thereof,) the same appears fully and at large; which said mortgage is conditioned for the payment of the bonds of said consolidated company, to the amount in the aggregate of ten millions, ($10,000,000) of dollars, dated January 1st, 1857, bearing interest at the rate of seven per centum per annum, payable semi-annually, on the first days of January and July of each year, and maturing January 1st, A. D. 1887; that of said bonds $3,500,000 were by said company set apart for purposes of construction, and of these, $2,065,000 have been sold, $489,000 hypothecated to secure the floating debt of said company and are outstanding, and $397,000 have been taken up by the receiver as collaterals to debt paid by him, and $266,000 are still held by the company unissued; and the remaining $6,500,000 were reserved to be used for the redemption, by exchanging the same therefor, of the bonds issued by the several original companies above-mentioned, and are usually called "redemption bonds," of which $2,000 have been issued or disposed of. That there is due for interest on the said bonds of said consolidated company, sold and hypothecated as aforesaid, to the first day of July, A. D. 1861, the sum of $389,343 55, made up as follows:

On bonds sold:

Coupons due January 1, 1859	$22,750 00	
Interest to July 1, 1861	3,981 25	
		$26,731 25

Coupons due July 1, 1859	22,785 00		
Interest to July 1, 1861	3,189 90		
		25,974 90	
Coupons due January 1, 1860 .	53,340 00		
Interest to July 1, 1861	5,600 70		
		58,940 70	
Coupons due July 1, 1860	54,635 00		
Interest to July 1, 1861	3,824 45		
		58,459 45	
Coupons due January 1, 1861 .	58,835 00		
Interest to July 1, 1861	2,059 27		
		60,894 27	
Coupons due July 1, 1861		62,895 00	
			$293,895 57

On bonds hypothecated :

Coupons due July 1, 1859	$7,910 00		
Interest to July 1, 1861	1,661 10		
		$9,571 10	
Coupons due January 1, 1859 .	8,400 00		
Interest to July 1, 1861	1,470 00		
		9,870 00	
Coupons due July 1, 1859	9,975 00		
Interest to July 1, 1861	1,396 50		
		11,371 50	
Coupons due January 1, 1860 .	14,770 00		
Interest to July 1, 1861	1,550 85		
		16,320 85	
Coupons due July 1, 1860	14,770 00		
Interest to July 1, 1861	1,033 90		
		15,803 90	
Coupons due January 1, 1861 .	14,875 00		
Interest to July 1, 1861	520 63		
		15,395 63	
Coupons due July 1, 1861		17,115 00	
			$95,447 98
			$389,343 55

That said mortgage of said consolidated company was duly recorded according to law, and is a valid conveyance for the purposes therein mentioned, and, subject to the prior liens of the respective mortgages of the said several original companies herein above declared, is the paramount lien upon the property and franchises thereby conveyed, and that next in order of priority to said prior mortgages of said original companies, the said bonds of said consolidated company sold and hypothecated as aforesaid, and the unpaid interest thereon, accrued and accruing, are entitled to priority in the distribution of the proceeds of any sale of the property covered by the said mortgage of said consolidated company, to be made under this decree, which may remain after payment of the costs and expenses of this suit and other equitable charges provided to be paid by the interlocutory orders heretofore made in this case, to be equitably apportioned between the four divisions of said road as provided in the preceding parts of this decree, not otherwise paid or provided for. And if the residue of said proceeds

which shall remain after payment of the said mortgages of the original company: costs, expenses and charges as aforesaid shall not be adequate to fully pay the bonds and interest coupons of the said consolidated company secured by said mortgage of said company, which have been sold and hypothecated as aforesaid, the same shall be distributed and applied first in full payment of the interest coupons due and unpaid upon said bonds, and interest accured and accruing upon said coupons; and second in payment of the principal of said bonds pro rata one with another as far as the same will reach. But no greater amount of proceeds shall be applied in payment on said hypothecated bonds than will be adequate to pay the claims for which they are pledged.

And the court doth further find, that after the making of the said several mortgages by the said original companies, and before said consolidation agreement was entered into, the said original companies, severally, made additions to, and extended their respective roads, and acquired rolling stock and other property, and made additional structures and improvements for the use and convenience of operating said roads severally; and in like manner that the said consolidated company, since said consolidation agreement was entered into, has made additions to and extended its line of road, and acquired rolling stock and other property, and has made additional structures and improvements for the use and convenience of operating its said road. And the court doth find, and doth order, adjudge, and decree, that the said mortgages of the said original companies do, in law, operate to cover and include each, severally, so much of the said additions and extensions of said roads, respectively, and other fixed property, structures, and improvements as is situate upon the line of road, and at and between the termini thereof, of each of said original companies, whether made by said original
31 companies or by the said consolidated company—and that said original mortgages, in like manner, cover and include each, severally, all of such acquisitions of rolling stock and other property as by said original companies respectively had been acquired before said consolidation agreement; and in like manner, that said original mortgages cover and include all of the said acquisitions of rolling stock and other property acquired by said consolidated company, subject to be apportioned equitably amongst and between said mortgages in the same proportions that the entire property of said original companies, as the same existed at the time of the consolidation, was held and owned by said companies, severally, to be ascertained and determined as hereinafter ordered. Provided, however, that in ascertaining and apportioning to said original mortgages the said additions to and extensions of said roads and structures, and improvements, made for the use and convenience in operating the same, the whole amount of all balances due to former owners for rights of way, whether at Chicago, upon liabilities incurred since the commencement of the suit, or elsewhere, prior thereto; and all balances due upon the bridge bonds (so called) of the Ohio and Pennsylvania Rail Road Company, secured by mortgage or deed of trust to Thomas Firth and Reuben Miller, jr., dated May 6, 1856, shall be excluded—the sale herein ordered to be made in so far as regards the premises covered by said mortgage, and in so far as regards all rights of way unpaid for being only of the right, in equity, of said original and consolidated companies thereto, subject to said mortgage, and to liens for unpaid purchase money for rights of way.

And the court doth further find that the said John Ferguson and Thomas E. Walker, the grantees in trust of the said mortgage or deed of trust made as aforesaid by the Pittsburgh, Fort Wayne and Chicago

Railroad Company, since the default aforesaid of said company, in the non-payment of the interest in arrear as aforesaid upon the several mortgages aforesaid, have been requested by holders of bonds of said consolidated company, exceeding in amount the sum of one hundred thousand dollars, and exceeding in amount one-half of all other bonds secured by all the other mortgages by the said original companies, severally to enter upon and sell all and singular the mortgaged premises in the said mortgage of said consolidated company, specified, granted, and conveyed; and that a like request has been made of the several grantees in trust of the said several mortgages made as aforesaid by the said several original companies surviving.

Whereupon, it is ordered, adjudged, and decreed by the court, that the said Pittsburgh, Fort Wayne and Chicago Railroad Com-
32 pany, on or before the second day of July next, pay into the hands of the receiver in this case, the said several amounts of money herein above found to be due and unpaid for interest upon the several bonds of the said several original companies, or that shall become due within the time limited for such payment, with interest thereon till paid, secured by the several mortgages of said original companies, as aforesaid; also, that the said Pittsburgh, Fort Wayne and Chicago Railroad Company, within the same time pay into the hands of said receiver the amounts of money herein above found to be in arrear and unpaid for interest upon the bonds of said company, or that shall become due within the time limited for such payment, with interest thereon, secured by the mortgages aforesaid of said company, and which have been sold and hypothecated as aforesaid, to be held subject to the order of this court, to be made in conformity with the facts and equitable rights and priorities as herein above found by the court. And in default of such payment, it is further ordered, adjudged, and decreed by the court, that the said railroad of the said Pittsburgh, Fort Wayne and Chicago Railroad Company, including the right of way therefor, the road-bed thereof, the superstructures of all sorts thereon; its water and other station houses and shops, and the lands and grounds connected therewith, and all tools and implements used or provided to be used therein, and in constructing and repairing cars and machinery for said road, or the track or superstructures aforesaid; all turn-tables, all depots and buildings, and fixtures and structures of whatever name or nature, and the lands and grounds connected therewith, used or provided to be used in operating said road, and wherever situate; and all cars, engines, and rolling-stock belonging to said company; and all supplies of timber, lumber, iron, fuel, and every other thing provided by said company and by the said original companies, severally, to be used in operating said road, wherever situate, by the same title by which the same are holden by said company and by the said original companies, severally, together with all corporate franchises of said company and of the said original companies, severally, including the right and franchise of said several companies to be and act as a corporation, be sold as herein ordered and directed, and as an entirety, the same being, in the opinion and judgment of this court, incapable of being sold separately without waste and material injury to the value thereof, and that the same be sold without appraisement.

And the court doth order and direct that, all and singular, the property and effects, and rights and franchises of said Pittsburgh, Fort
Wayne and Chicago Railroad Company, and of the said several
33 original companies so ordered to be sold as aforesaid, shall be sold by the complainants, John Ferguson and Thomas E. Walker,

the said grantees in trust of the said mortgage or deed of trust made as aforesaid by the said Pittsburgh, Fort Wayne and Chicago Railroad Company, in their said capacity of trustees, and as special master commissioners of this court; and to this end the said John Ferguson and Thomas E. Walker, or the survivor of them, in the case of the death of either of them, are hereby constituted and appointed special master commissioners in this case, with full power as such, and in their said capacity as trustees, to execute and carry into effect the order of sale now here made, and to do and perform all such matters and things as shall be ordered and required of them in this behalf. And for their services under this order, there shall be allowed and paid to them, out of any money in the hands of the receiver, or to come to his hands, the sum of five thousand dollars, to be divided between them as may be equitable, regard being had to the services to be rendered by them severally in the premises.

And the court doth further order, adjudge, and decree, that the said special master commissioners and trustees, before offering said property, franchises, and premises for sale, shall first advertise the time and place of the sale thereof, setting forth in such advertisements a concise and pertinent designation of the subject-matter to be sold, in three principal daily newspapers printed in the cities of New York, Albany, Boston, Philadelphia, Pittsburgh, Baltimore, Washington City, and Chicago, to be continued for not less than twenty days, the said Pittsburgh, Fort Wayne and Chicago Railroad Company, by resolution of its board of directors having assented thereto, and in one paper in the city of Cleveland, not less than thirty days—which sale shall be made by public auction at the court-house of this court, in the city of Cleveland, in the State of Ohio, to the highest bidder for cash in hand, but not for less than the sum of five hundred thousand dollars.

It is further ordered, that it shall be competent for the said special master commissioner and trustees, or the survivor of the mas aforesaid, in their or his discretion, to keep open the biddings at the place of sale to be advertised as aforesaid, after publicly opening the same at the time and place appointed, by adjournment from time to time during a period of not more than twenty days, inclusive of the first day so to be appointed.

And for these purposes an order shall be issued by the clerk, under the seal of this court, embodying so much of this decree in substance as relates to the duties of the said special master commissioners
34 and trustees, and directing and requiring them to carry the same into execution, and to return the same, with a report of their doings under the same, to this court. And if for any cause, said special master commissioners and trustees shall not make sale of said property and franchises upon the order so to be issued, a further order or orders for the same purpose may be issued by the clerk, upon the written request of counsel for the complainants, until a sale shall be effected in the manner aforesaid, and the same be confirmed by the court. And it is hereby reserved, that it may and shall be competent for the court, for good cause, at any time hereafter, upon return of any order of sale, to be issued as aforesaid (no sale being made pursuant thereto) to modify the terms and conditions of sale herein prescribed, as to the court shall appear just and expedient. And upon the report of a sale, the court, by an order to be made in the premises may confirm, or for good cause shown, may set aside the same, and direct the same to be offered and put to sale; and upon confirmation by the court of any sale to be made as aforesaid, it is further adjudged and decreed by

the court, that the purchaser or purchasers, upon full compliance with the conditions of sale, and the orders of the court, made or to be made herein, touching the payment of purchase-money, shall be entitled to take and hold, and the same again to sell or otherwise dispose of at pleasure, all of the said property, rights, franchises, and the appurtenances thereof, so as aforesaid ordered to be sold, by the same title by which the same are, or were, at any time before said sale, owned, claimed, or held by the said Pittsburgh, Fort Wayne and Chicago Railroad Company, and by each and all of said original railroad companies, so consolidated as aforesaid, free and discharged from the lien of each and all of the mortgages in this decree above mentioned, made by the said consolidated company and by said original companies, severally; and free and discharged from all liability from any debt or debts, claim or claims, of whatsoever name or nature, in behalf of any and all persons against said consolidated and original companies, or any of them, and from the claims of all persons for or on account of capital stock, now held or claimed in any of said companies; but subject, nevertheless, to the lien, if any such exists, in behalf of any vendor or former owner thereof, upon any real estate to be included in said sale, for purchase-money of such real estate, not otherwise provided to be paid by this decree out of the proceeds of such sale, or otherwise, by the former orders made in this case, including the rights of way and depot grounds and lots and premises purchased since the pendancy of the suit by the agency of the receiver in this cause, in city and
35 vicinity of Chicago; and subject to the lien of said mortgage for the unpaid residue of the bridge bonds and interest coupons thereto annexed, which remain unpaid upon the premises conveyed in trust to the said Thomas Firth and Reuben Miller, jr., above herein referred to. But it is hereby decreed that the purchaser or purchasers at said sale shall not incur any personal liability to pay the said bridge bonds and coupons, or money due to third persons for rights of way, including the rights of way and depot grounds and lots and premises purchased since the pendency of this suit, in the city and vicinity of Chicago; or for any other liability of the said companies, or any of them.

And upon confirmation of said sale the said receiver shall surrender and deliver over to the purchasers or their assigns all of the said property and the appurtenances thereof so ordered to be sold as aforesaid; but subject to be redelivered into the hands of the receiver, upon the further order of the court, to be re-sold at the risk of said purchasers, if default be made on their part to comply with the terms of their purchase; and upon full payment of the purchase-money, and compliance with the terms of their purchase by said purchasers, to be found by the further order of the court to be made in the premises, the said special master commissioners and trustees, in their said several capacities, or the survivor of them, shall, by deed, to be executed in such form as may be proper to convey real estate in the said several States of Pennsylvania, Ohio, Indiana, and Illinois, convey the premises so to be sold to the purchasers, their heirs, or successors, or assigns; and thereupon also the said Pittsburgh, Fort Wayne and Chicago Railroad Company shall by like deed, convey and confirm said premises to said purchasers, their heirs, or successors, or assigns.

And the court doth further order that the distributable part of the proceeds of said sale, which, upon the footing of this decree, shall belong to the benefit of the several mortgages hereinbefore mentioned, against by said several original companies, shall be ascertained by Thom[illegible]

Messler and W'm S. Chamberlain, who are hereby appointed special master commissioners in this behalf, who shall take an account of the property and effects of every description included in said sale, which before said consolidation belonged to each of said original companies, and a like account of the property and effects of said consolidated company, included in said sale, acquired since said consolidation, and shall determine the relative values thereof; and shall apportion the gross proceeds of said sale, in proportion to the said relative values of said property and effects, amongst and between the said original com-
36 panies and the said consolidated company, to the end that the same may be distributed and applied in conformity with the principles of this decree, as by the further order of the court to be made herein shall be equitable.

And all questions arising in this cause, not herein or heretofore adjudicated by the court, are reserved for further consideration.

Also, it is further reserved, that all errors which have intervened in the statements of sums and amounts, or in calculations on which such statements are founded in this decree contained, and all clerical errors therein, may and shall be corrected upon the order of the court, to be made upon the motion of any party interested in the same. Also, it is reserved that this decree shall be opened and set aside on the motion of the Pittsburgh, Fort Wayne and Chicago Railroad Company, and without any showing of cause, at any time prior to or within the first ten days of the next regular July term of this court; and the same right is reserved to the complainants at any time before a sale made under this decree.

You are therefore hereby commanded, as such trustees and special master commissioners, to proceed to carry into execution the said decree, as you are therein and thereby directed and required, and to return the same, with a report of your doings under the same, to our said circuit court of the United States for the northern district of Ohio, within sixty days from the date of this decretal order.

Witness the Honorable Roger B. Taney, Chief Justice of the United States, this seventh day of September, in the year of our Lord one thousand eight hundred and sixty-one, of the independence of the United States of America the eighty-sixth.

[SEAL.] F. W. GREEN, *Clerk.*

Proceedings in Pennsylvania.

UNITED STATES OF AMERICA,
Western District of Pennsylvania, ss:

The President of the United States to John Ferguson and Thomas E. Walker, greeting:

Whereas by the decree of our circuit court of the United States in and for the western district of Pennsylvania, in a certain cause in chancery pending in said court, wherein Charles Moran, Louis A. Von Hoffman, John Ferguson, and Thomas E. Walker are complain-
37 ants, and the Ohio and Pennsylvania Railroad Company, the Pittsburgh, Fort Wayne and Chicago Railroad Company, and Thomas Scott are defendants, rendered and given at the May term of said court, it was and is amongst other things ordered, adjudged, and decreed by said court that the decree of the circuit court of the United States for the northern district of Ohio, a copy whereof was set forth and recited in the decree of our said court, given and rendered in a

the court, that the purchaser or purchasers, upon full compliance with the conditions of sale, and the orders of the court, made or to be made herein, touching the payment of purchase-money, shall be entitled to take and hold, and the same again to sell or otherwise dispose of at pleasure, all of the said property, rights, franchises, and the appurtenances thereof, so as aforesaid ordered to be sold, by the same title by which the same are, or were, at any time before said sale, owned, claimed, or held by the said Pittsburgh, Fort Wayne and Chicago Railroad Company, and by each and all of said original railroad companies, so consolidated as aforesaid, free and discharged from the lien of each and all of the mortgages in this decree above mentioned, made by the said consolidated company and by said original companies, severally; and free and discharged from all liability from any debt or debts, claim or claims, of whatsoever name or nature, in behalf of any and all persons against said consolidated and original companies, or any of them, and from the claims of all persons for or on account of capital stock, now held or claimed in any of said companies; but subject, nevertheless, to the lien, if any such exists, in behalf of any vendor or former owner thereof, upon any real estate to be included in said sale, for purchase-money of such real estate, not otherwise provided to be paid by this decree out of the proceeds of such sale, or otherwise, by the former orders made in this case, including the rights of way and depot grounds and lots and premises purchased since the pendancy of the suit by the agency of the receiver in this cause, in city and
35 vicinity of Chicago; and subject to the lien of said mortgage for the unpaid residue of the bridge bonds and interest coupons thereto annexed, which remain unpaid upon the premises conveyed in trust to the said Thomas Firth and Reuben Miller, jr., above herein referred to. But it is hereby decreed that the purchaser or purchasers at said sale shall not incur any personal liability to pay the said bridge bonds and coupons, or money due to third persons for rights of way, including the rights of way and depot grounds and lots and premises purchased since the pendency of this suit, in the city and vicinity of Chicago; or for any other liability of the said companies, or any of them.

And upon confirmation of said sale the said receiver shall surrender and deliver over to the purchasers or their assigns all of the said property and the appurtenances thereof so ordered to be sold as aforesaid; but subject to be redelivered into the hands of the receiver, upon the further order of the court, to be re-sold at the risk of said purchasers, if default be made on their part to comply with the terms of their purchase; and upon full payment of the purchase-money, and compliance with the terms of their purchase by said purchasers, to be found by the further order of the court to be made in the premises, the said special master commissioners and trustees, in their said several capacities, or the survivor of them, shall, by deed, to be executed in such form as may be proper to convey real estate in the said several States of Pennsylvania, Ohio, Indiana, and Illinois, convey the premises so to be sold to the purchasers, their heirs, or successors, or assigns; and thereupon also the said Pittsburgh, Fort Wayne and Chicago Railroad Company shall, by like deed, convey and confirm said premises to said purchasers, their heirs, or successors, or assigns.

And the court doth further order that the distributable parts of the proceeds of said sale, which, upon the footing of this decree, shall inure to the benefit of the several mortgages hereinbefore mentioned, made by said several original companies, shall be ascertained by Thomas D.

Messler and W'm S. Chamberlain, who are hereby appointed special master commissioners in this behalf, who shall take an account of the property and effects of every description included in said sale, which before said consolidation belonged to each of said original companies, and a like account of the property and effects of said consolidated company, included in said sale, acquired since said consolidation, and shall determine the relative values thereof; and shall apportion the gross proceeds of said sale, in proportion to the said relative values of said property and effects, amongst and between the said original com-
36 panies and the said consolidated company, to the end that the same may be distributed and applied in conformity with the principles of this decree, as by the further order of the court to be made herein shall be equitable.

And all questions arising in this cause, not herein or heretofore adjudicated by the court, are reserved for further consideration.

Also, it is further reserved, that all errors which have intervened in the statements of sums and amounts, or in calculations on which such statements are founded in this decree contained, and all clerical errors therein, may and shall be corrected upon the order of the court, to be made upon the motion of any party interested in the same. Also, it is reserved that this decree shall be opened and set aside on the motion of the Pittsburgh, Fort Wayne and Chicago Railroad Company, and without any showing of cause, at any time prior to or within the first ten days of the next regular July term of this court; and the same right is reserved to the complainants at any time before a sale made under this decree.

You are therefore hereby commanded, as such trustees and special master commissioners, to proceed to carry into execution the said decree, as you are therein and thereby directed and required, and to return the same, with a report of your doings under the same, to our said circuit court of the United States for the northern district of Ohio, within sixty days from the date of this decretal order.

Witness the Honorable Roger B. Taney, Chief Justice of the United States, this seventh day of September, in the year of our Lord one thousand eight hundred and sixty-one, of the independence of the United States of America the eighty-sixth.

[SEAL.] F. W. GREEN, *Clerk.*

Proceedings in Pennsylvania.

UNITED STATES OF AMERICA,
Western District of Pennsylvania, ss:

The President of the United States to John Ferguson and Thomas E. Walker, greeting:

Whereas by the decree of our circuit court of the United States in and for the western district of Pennsylvania, in a certain cause in chancery pending in said court, wherein Charles Moran, Louis A. Von Hoffman, John Ferguson, and Thomas E. Walker are complain-
37 ants, and the Ohio and Pennsylvania Railroad Company, the Pittsburgh, Fort Wayne and Chicago Railroad Company, and Thomas Scott are defendants, rendered and given at the May term of said court, it was and is amongst other things ordered, adjudged, and decreed by said court that the decree of the circuit court of the United States for the northern district of Ohio, a copy whereof was set forth and recited in the decree of our said court, given and rendered in a

cause in chancery pending between the same parties in said court for the northorn district of Ohio, should be and was adopted in all things as the decree of our said court, in said cause, the same being auxiliary to the cause so pending in said nothern district of Ohio, in so far as respects that part of the railroad property of the said Pittsburgh, Fort Wayne and Chicago Railroad Company in said decree referred to.

And whereas it was and is, amongst other things, ordered, adjudged and decreed by the said court for the northern district of Ohio, in and by its said decree so adopted by our said court, that the said Pittsburgh, Fort Wayne and Chicago Railroad Company, on or before the second day of July then next, (1861,) should pay into the hands of the receiver in said case, the several amounts of money in said decree found to be due and unpaid for interest upon the several bonds of the several original companies in said decree referred to, or that should become due within the time limited for such payment, with interest thereon till paid, secured by the several mortgages of said original companies as set forth in said decree. Also, that said Pittsburgh, Fort Wayne and Chicago Railroad Company, within the same time, should pay into the hands of the receiver the amounts of money in said decree found to be in arrear and unpaid for interest upon the bonds of said company, or that should become due within the time limited for such payment, with interest thereon, secured by the mortgage of said company in said decree referred to, and which have been sold and hypothecated, as set forth in said decree, to be held subject to the further order of said court for said northern district of Ohio, to be made in conformity with the facts and equitable rights and priorities as found by said court in said decree. And in default of such payment, it was further ordered, adjudged, and decreed by said court for the northern district of Ohio, that the railroad of the said Pittsburgh, Fort Wayne and Chicago Railroad Company, including the right of way therefor, the road bed thereof, the superstructures of all sorts thereon, its water and other stations, houses and shops, the lands and grounds connected therewith, and all tools and implements used or provided to be used therein, and in constructing and repairing cars and machinery for said road or the track
38 and superstructure aforesaid, all turn-tables, all depots, and buildings and fixtures and structures of whatever name or nature, and the lands and grounds connected therewith, used or provided to be used in operating its said road, and wherever situated; and all cars, engines, and rolling stock belonging to said company, and all supplies of timber, lumber, iron, fuel, and every other thing provided by said company and said original companies severally, to be used in operating said road, wherever situate, by the same title by which the same are holden by said company, and by said original companies severally, together with all corporate franchises of said company and said original companies severally, including the right of franchise of said several companies to be and act as a corporation, should be sold as in said decree ordered and directed, as an entirety, the same being, in the opinion and judgment of said court, incapable of being sold separately, without waste and material injury to the value thereof, and that the same be sold without appraisement.

And whereas it was further, by the said court for the northern district of Ohio, in and by its said decree, ordered and directed that all and singular the property and effects, and rights and franchises of said Pittsburgh, Fort Wayne and Chicago Railroad Company, and of the said several original companies, so ordered to be sold as aforesaid, should be sold by you, the said John Ferguson and Thomas E. Walker, complain-

ants as aforesaid, and grantees in trust of the said mortgages or deeds of trust made as set forth in said decree by the said Pittsburgh, Fort Wayne and Chicago Railroad Company, in your capacity of trustees in that behalf, and as special master commissioners of the said court of the said northern district of Ohio. And to that end, you, the said John Ferguson and Thomas E. Walker, or the survivors of you, in case of the death of either of you, were, by said decree of said court of the northern district of Ohio, constituted and appointed special master commissioners in said case, with full power as such, and in your said capacity as trustees, to execute and carry into effect the said order of sale so made by said court, and to do and perform all such other matters and things as should be ordered and required of you in that behalf.

And it was further ordered, adjudged, and decreed by said court for said northern district of Ohio, that you, the said special master commissioners and trustees, before offering said property, franchises, and premises for sale, should first advertise the time and place of sale thereof, setting forth in such advertisement a concise and pertinent designation of the subject-matter to be sold, in three principal daily newspa-
39 pers printed in the cities of New York, Albany, Boston, Philadelphia, Pittsburgh, Washington City, and Chicago, to be continued for not less than twenty days, and in one paper in the city of Cleveland, not less than thirty days, said sale to be made by public auction at the court-house of said court for the northern district of Ohio, in Cleveland, in the State of Ohio, to the highest bidder for cash in hand, but not for less than the sum of five hundred thousand dollars, with power to you, as such special commissioners and trustees, or the survivor of you, in your discretion, to keep open the biddings at the place of sale to be advertised as aforesaid, after publicly opening the same, at the time and place appointed, by adjournment from time to time during a period of not more than twenty days, inclusive of the first day so to be appointed, and for these purposes that an order should be issued by the clerk of said court under the seal thereof, embodying as much of said decree in substance as relates to your duties in that behalf; and directing and requiring you to carry the same into execution, and to return the same with a report of your doings under the same to said court.

And whereas it was by our said court further ordered, adjudged, and decreed that the said railroad property situate within the jurisdiction of our said court as aforesaid, with all and singular the corporate franchises of said company, and of said original companies, appertaining thereto, shall be sold by you, the said master commissioners and trustees named and appointed in the said recited decree to make sale of the premises in said decree ordered to be sold; and that you sell the same in conformity with said decree in connection with and as part and parcel of the premises so ordered to be sold, and to that end that a decretal order be issued by the clerk under the seal of this court to you, or the survivor of you, in conformity with our said decree, to be returned by you or the survivor of you to this court with the report of your doings in obedience thereto.

And whereas we are advised and given to know that the said Pittsburgh, Fort Wayne and Chicago Railroad Company hath hitherto wholly failed and neglected to pay the receiver or otherwise howsoever the said sums of money, or any or either of them, or any part thereof in said decree of the said circuit court for the northern district of Ohio, specified and required to be paid by said company, and that said decree remains in full force and virtue to be executed according to the terms thereof:

Therefore, you, the said John Ferguson and Thomas E. Walker, or the survivor of you in case of the death of either, are hereby directed, ordered, and required, without any delay after you shall receive
40 the proper order for that purpose from the said circuit court for the northern district of Ohio, to proceed to advertise, offer and expose to sale, and make sale of all and singular the said property, rights, and franchises so as aforesaid ordered to be sold, situate and being within the territorial jurisdiction of this court, and in so doing that you in all things conform to our order and decree in the premises recited and set forth herein as aforesaid. And that you return this order into the court after you shall have sold or advertised and offered for sale the said property, rights, and franchises, with your report in writing of all and whatsoever you have done in execution thereof.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, at Pittsburgh, this day of , A. D. 1861, and in the year of the independence of the United States the eighty-sixth.

Clerk.

Proceedings in Indiana.

CHARLES MORAN, LOUIS VON HOFFMAN, and JOHN FERGUSON, *vs.* THE PITTSBURGH, FT WAYNE AND CHICAGO RAILROAD COMPANY. } In chancery.

The following are the proceedings had in part, for the circuit court of the United States for the seventh judicial circuit and district for State of Indiana, auxiliary to the decree of sale of the circuit court for the northern district of Ohio:

Whereupon it is ordered, adjudged, and decreed by the court that the said decree of the said circuit court of the United States for the northern district of Ohio, be, and the same is hereby, in all things adopted as the decree of this court in this case, in so far as respects that part of the said railroad and property of the said Pittsburgh, Fort Wayne and Chicago Railroad Company in said decree referred to, which is situate within the territorial jurisdiction of this court; and the court doth order, adjudge, and decree that the said railroad and property situate within the jurisdiction of this court as aforesaid, with all and singular, the corporate franchises of said company, and of said original companies appertaining thereto, shall be sold by the same master commissioners and trustees named and appointed in said recited decree, to
41 make sale of the premises in and by said decree ordered to be sold; and that they sell the same in conformity with said decree in connection with and as part and parcel of the premises so ordered to be sold; and to that end a decretal order be issued by the clerk under the seal of this court to the said master commissioners and trustees or the survivor of them, in conformity with this decree, to be returned by them or the survivor of them to this court with the report of their doings in obedience thereto. And the court doth further order that the proceeds of any sale to be made in the premises as herein contemplated be accounted for, disbursed, and paid over, as by said circuit court of the United States for the northern district of Ohio, the same shall be ordered; also, that upon confirmation by said court of any such sale, and upon

the execution and delivery of deeds of conveyance for the property and franchises sold in pursuance of the said decree of said court, or any further orders to be made by said court in the premises, all of the right, title, and estate of the said Pittsburgh, Fort Wayne and Chicago Railroad Company, and of the said original companies within the jurisdiction of this court, and the franchises of each and all of said companies connected therewith shall pass thereby to and vest in the grantees of such deeds of conveyance.

And further, it is ordered that the costs in this case, including reasonable fees to the counsel of the several parties for their services herein, to be taxed by the clerk, be certified under the seal of this court to the circuit court for the northern district of Ohio, to the end that the payment thereof may be provided for by the order of said court, to be made out of the funds subject to its order in said original cause; and in regard to the costs and fees so to be certified, the right is, by the court here, reserved to make such further order as may be necessary to enforce the due payment thereof, if the same be not paid as in this order is above contemplated.

And further, all other questions not herein or heretofore adjudicated by this court in this cause, which may be necessary to the proper adjudication of the rights of any of the parties interested, arising upon the pleadings, are reserved for further consideration and adjudication by the court.

And whereas it is represented to the court, by the parties to this suit, that said decree of the circuit court of the United States for the northern district of Ohio, will probably be set aside and reëntered in that court, in order that an agreement of two-thirds or more of the creditors and stockholders or said company may be first filed in said court, pursuant to an act of the general assembly of the State of Ohio, entitled "An act to regulate the sale of railroads and the re-
42 organization of the same," with such modifications as to the time given said company to pay said moneys, or otherwise, as may thereby become necessary; it is now here ordered and adjudged by the court that, if said decree be thus set aside and reëntered, this decree shall not thereby be vacated, but shall remain in full force as auxiliary to the decree so reëntered and modified as aforesaid, and shall be executed and have as full effect as though said decree, instead of being so vacated and reëntered, had been originally rendered, in form and substance, as the same may be so reëntered, and as though the same were herein inserted verbatim and adopted and approved by this court.

Proceedings in Illinois.

CHARLES MORAN, LOUIS A. VON HOFFMAN, John Ferguson, and Thomas E. Walker,
vs.
THE PITTSBURGH, FORT WAYNE AND CHICAGO Railroad Company, and Thomas Scott. } Chancery.

Proceedings in circuit court of the United States for the northern district of Illinois, at Chicago, in said district, in chancery sitting, before the Hon. Thomas Drummond, judge, on Wednesday, July 31st, A. D. 1861:

The defendants still failing to plead, answer, or demur to the complainant's bill of complaint, on motion of the complainants, by their counsel, it is ordered by the court that said bill of complaint be taken

as confessed by the defendants; and thereupon the cause came on to be heard upon the bill of complaint, exhibits herewith filed, documentary evidence, and admissions of the parties, by their counsel, in open court; in consideration whereof the court doth find that the circuit court of the United States for the seventh circuit and northern district of Ohio, has made its decree in the original cause pending in said court, to which this cause is auxiliary, and that said decree is in the words and figures following, that is to say:

United States circuit court, northern district of Ohio.

CHARLES MORAN, LOUIS A. VON HOFFMAN, et. al.
vs.
THE OHIO AND PENNSYLVANIA RAILROAD Company, et al.
} No. 813, in chancery.

The defendants still failing to plead, answer, or demur to the complainant's bill of complaint, on motion of the complainants, by their counsel, it is ordered by the court that said bill of complaint be
43 taken as confessed by the defendants, and thereupon the cause came on to be heard on the bill of complaint, exhibits herewith filed, documentary evidence, and admissions of the parties, by their counsel, in open court; on consideration whereof the court doth find the equity of the case to be with the complainants, and that all and singular the allegations and charges in the bill of complaint contained, are true, and particularly—

"1st. That the said Ohio and Pennsylvania Railroad Company was incorporated and organized pursuant to the acts of the general assembly of the States of Ohio and Pennsylvania, as alleged in the bill of complaint; that it located its road, in conformity to said acts, from the town of Crestline, in the State of Ohio, to the city of Pittsburgh, in the State of Pennsylvania, and thereafter, for the purposes in the bill of complaint mentioned, made the said two mortgages, copies of which are exhibited with this bill, the one marked 'A,' the other marked 'B;' the former upon so much of its road as extends from Massillon, in the State of Ohio, east to Pittsburgh; the latter upon so much of its road as extends west from Massillon, to Crestline; that John J. Palmer, the grantee in trust of each of said mortgages, died before the commencement of this suit, leaving said trust vacant, and that the same is still vacant; that the complainants, Charles Moran and Louis A. Von Hoffman, severally, before and at the time of the commencement of this suit, were, and still are, the owners and holders of bonds of said Ohio and Pennsylvania Railroad Company, secured by each of the aforesaid mortgages, and by reason of the death of said trustee, and the vacancy of said trust, have good right, in equity, to intervene as complainants in this behalf. That said mortgages were duly recorded according to law, as charged in the bill, and are valid conveyances for the purposes therein mentioned, and as such, have each a paramount lien upon the road and its equipments, property, and franchises thereby severally conveyed, and are entitled to priority in the distribution of the proceeds, if any sale thereof be made pursuant to this decree, over any other lien *in* claim against the same, subject only to the payment of an equitable part of the necessary costs and expenses of this suit, and other equitable charges, provided to be paid by the interlocutory order heretofore made in this case, so far as the same shall not be otherwise paid or provided

for; said proceeds accruing under each of said mortgages, after defraying costs, expenses, and equitable charges as aforesaid, if not adequate to fully pay the outstanding bonds and interest coupons secured by said mortgages, severally to be applied and distributed pro rato in payment of the same.

"And the court doth find that bonds to the amount of $1,000,000 of principal remain outstanding, secured by said first-named mort-
44 gage, Exhibit 'A,' and that there remains due for interest thereon to the first day of July, A. D. 1861, the sum of $303,373 70, which sum is made up as follows:

"Coupons due January 1, 1858	$31,990 00	
Interest on same to July 1, 1861	7,837 55	
		$39,827 55
Coupons due July 1, 1858	31,990 00	
Interest to same date	6,717 90	
		38,707 90
Coupons due January 1, 1859	31,990 00	
Interest to same date	5,598 25	
		37,588 25
Coupons due July 1, 1859	35,000 00	
Interest to same date	4,900 00	
		39,900 00
Coupons due January 1, 1860	35,000 00	
Interest to same date	3,675 00	
		38,675 00
Coupons due July 1, 1860	35,000 00	
Interest to same date	2,450 00	
		37,450 00
Coupons due July 1, 1861	35,000 00	
Interest to same date	1,225 00	
		36,225 00
Coupons due July 1, 1861		35,000 00
Total		$303,373 70

"And that bonds to the amount of $750,000 of principal remain outstanding, secured by said second mortgage, Exhibit 'B,' and that there remains due for interest thereon, to the first day of July, A. D. 1861, the sum of $235,725, which sum is made up as follows:

Coupons due January 1, 1858	$26,250 00	
Interest to July 1, 1861	6,431 25	
		32,681 25
Coupons due July 1, 1858	26,250 00	
Interest to same date	5,512 50	
		31,762 50
Coupons due January 1, 1859	26,250 00	
Interest to same date	4,595 75	
		30,843 75
Coupons due July 1, 1859	26,250 00	
Interest to same date	3,675 00	
		29,925 00
Coupons due January 1, 1860	26,250 00	
Interest to same date	2,756 25	
		29,066 25

Coupons due January 1, 1860	26,250 00	
Interest to same date	1,837 50	
		28,087 50
Coupons due January 1, 1861	26,250 00	
Interest to same date	918 75	
		27,168 75
Coupons due July 1, 1861		26,250 00
Total		$235,725 00

"2nd. The court doth find that the said Ohio and Pennsylvania Railroad Company, on the 30th day of June, 1856, made a third mortgage on the entire line of its road from Pittsburgh to Crestline, to the complainant, John Ferguson, and the defendant, Thomas Scott, as
45 trustees, as stated in the bill, and that said mortgage is a valid lien upon the property herein specified, and that the bonds and unpaid coupons therein thereby secured, are entitled to be fully paid, so far as the same are outstanding, out of any proceeds of the sale of said mortgaged property, to be made as aforesaid, which may remain after payment of the said first and second mortgages in the decree abovementioned, or if such remaining proceeds shall be inadequate to fully pay said bonds and coupons, that then, and in such case, said proceeds are distributed in payment of said bonds and coupons, pro rata, in proportion to their respective amounts; and the court doth find that the aggregate amount of said bonds outstanding at the date of this decree, is the sum of $1,987,000 of principal, and that there is due for interest thereon to the first day of July, A. D. 1861, the sum of $510,872 22, which sum is made up as follows:

"Coupons due April 1, 1858	$59,710 00	
Interest to July 1, 1861	13,584 02	
		73,294 02
Coupons due October 1, 1858	59,710 00	
Interest to July 1, 1861	11,494 17	
		71,204 17
Coupons due April 1, 1859	59,710 00	
Interest to July 1, 1861	9,404 32	
		69,114 32
Coupons due October 1, 1859	69,195 00	
Interest to July 1, 1861	8,476 33	
		77,761 38
Coupons due April 1, 1860	69,545 00	
Interest to July 1, 1861	6,085 19	
		75,630 19
Coupons due October 1, 1860	69,545 00	
Interest to July 1, 1861	3,651 11	
		73,196 11
Coupons due April 1, 1861	69,545 00	
Interest to July 1, 1861	1,217 03	
		70,762 03
Total		$510,871 23

"3rd. The court doth further find that the said Ohio and Pennsylvania Railroad Company did, as alleged in the bill of complaint, become

consolidated with the Ohio and Indiana Railroad Company and the Fort Wayne and Chicago Railroad Company, under the corporate name of the Pittsburgh, Fort Wayne and Chicago Railroad Company, and that said consolidated company was fully organized on the 30th day of July, 1856, under and in pursuance of the contract, a copy of which, marked Exhibit 'C,' is filed with the bill, and that by virtue of contract and consolidation, and of the statutory provisions concerning the same, the said Pittsburgh, Fort Wayne and Chicago Railroad Company became liable to pay the debts and liabilities of the said original companies so consolidated; amongst the rest, the bonds and interest coupons aforesaid, of the said Ohio and Pennsylvania Railroad
46 Company, secured by the said several mortgages of said last-named company. That in addition to the said mortgages there existed at the time of said consolidation, and still exists the following named other mortgages on that portion of the road of said consolidated company, which lies between Crestline and Chicago, in each of which is also included other property, for the particulars whereof reference is made to said other mortgages and the records thereof, namely. 1st. One mortgage made by the said Ohio and Indiana Railroad Company, known as the first mortgages of said company, upon the entire line of said company's road from Crestline, in the State of Ohio, to Fort Wayne, in the State of Indiana, to secure the payment of one million of dollars of bonds of said company, dated August 1st, 1852, with interest at the rate of seven per cent. per annum, payable semi-annually, on the first days of February and August of each year, the principal thereof maturing August 1st, 1872, all of which bonds are outstanding, and there is due for interest thereon to the first day of July, A. D. 1862, the sum of $260,859 26, made up as follows:

" Coupons due February 1, 1858	$31,675 00	
Interest to July 1, 1861	7,575 60	
		39,250 60
Coupons due August 1, 1858	31,675 00	
Interest to July 1, 1861	6,466 98	
		38,141 98
Coupons due February 1, 1859	31,675 00	
Interest to July 1, 1861	5,358 36	
		37,033 36
Coupons due August 1, 1859	35,000 00	
Interest to July 1, 1861	4,695 83	
		39,695 83
Coupons due February 1, 1860	35,000 00	
Interest to July 1, 1861	3,470 83	
		38,470 83
Coupons due August 1, 1860	35,000 00	
Interest to July 1, 1861	2,245 83	
		37,245 83
Coupons due February 1, 1861	35,000 00	
Interest to July 1, 1861	1,020 83	
		36,020 83
Total		$265,859 26

" Which said mortgage was duly recorded according to law, and is a valid conveyance for the purposes therein mentioned, and is the paramount lien upon the property and franchises thereby conveyed, and

entitled to priority in the distribution of the proceeds of any sale thereof to be made under this decree, over any lien or claim against the same, subject only to the payment of an equitable part of the costs and expenses of this suit, and other equitable charges provided to be made by the interlocutory orders heretofore made in this case, so far as the same shall not otherwise be paid or provided for, said proceeds after defraying costs, expenses, and equitable charges as aforesaid, if
47 not adequate to fully pay the outstanding bonds and interest coupons secured by said mortgage, to be distributed and applied pro rata in payment on the same. 2nd. One mortgage made by said Ohio and Indiana Railroad Company, known as the second mortgage of said company, upon its said road, to secure the payment of $500,000 of the bonds of said company, of which $112,000 have been cancelled, and $8,000 have been taken up by receiver as collaterals to debt paid by him, which he now holds, leaving $380,000 thereof outstanding, dated October 1, 1853, bearing interest at the rate of seven per cent. per annum, payable semi-annually on the first days of April and October of each year, maturing October 1st, 1873, on which bonds there is interest due and unpaid to the 1st day of July, 1861, the sum of $87,100 25, made up as follows:

" Coupons due April 1, 1858	$8,435 00	
Interest to July 1, 1861	1,918 97	
		10,353 97
Coupons due October 1, 1858	8,435 00	
Interest to July 1, 1861	1,623 75	
		10,058 75
Coupons due April 1, 1859	8,435 00	
Interest to July 1, 1861	1,328 53	
		9,763 53
Coupons due October 1, 1859	13,300 00	
Interest to July 1, 1861	1,629 25	
		14,929 25
Coupons due April 1, 1860	13,300 00	
Interest to July 1, 1861	1,163 75	
		14,463 75
Coupons due October 1, 1860	13,300 00	
Interest to July 1, 1861	698 25	
		13,998 25
Coupons due April 1, 1861	13,300 00	
Interest to July 1, 1861	232 75	
		13,532 75
Total		$87,100 25

"Which said mortgage was duly recorded according to law, and is a valid conveyance for the purposes therein mentioned, and is the second lien upon the proceeds of any sale to be made as aforesaid, of the property conveyed thereby, and entitled to priority in distribution of any residue of said proceeds which may remain after said first mortgage above mentioned, upon said property, shall be fully satisfied, and if the same be not adequate to fully pay said outstanding bonds and interest coupons as secured by said second mortgage, said residue of said proceeds shall be distributed and applied pro rata in payment thereof. 3rd. One mortgage made by the Ohio and Indiana Railroad Company, known as the third mortgage of said company, upon its said road, to

secure the payment of $250,000 of the bonds of said company, of which $233,000 have been cancelled, leaving $17,000 thereof outstanding, dated Sept. 1, 1854, bearing interest at the rate of seven per cent. per annum, payable semi-annually on the first days of March and
48 September, of each year, and maturing September 1st, 1874, on which bonds there is interest due and unpaid to the first day of July, 1861, the sum of $2,560 56, made up as follows:

"Coupons due September 1, 1859	$595 00	
Interest to July 1, 1861	76 37	
		671 37
Coupons due March 1, 1860	595 00	
Interest to July 1, 1861	55 55	
		650 55
Coupons due September 1, 1860	595 00	
Interest to July 1, 1861	34 73	
		629 73
Coupons due March 1, 1861	595 00	
Interest to July 1, 1861	13 91	
		608 91
Total		$2,560 56

"Which said mortgage was duly recorded according to law, and is a valid conveyance for the purposes therein mentioned, and is the third lien upon the proceeds of any sale to be made as aforesaid of the property conveyed thereby, and entitled to priority in distribution of any residue of said proceeds which may remain after said first and second mortgages above named shall be fully satisfied, and if the sum be not adequate to fully pay said outstanding bonds and interest coupons secured by said third mortgage, said residue of proceeds shall be distributed and applied pro rata in payment thereof. Of each and all of which said three mortgages last above named, the said plaintiff, John Ferguson, is grantor in trust.

"4th. One mortgage made by the said Fort Wayne and Chicago Railroad Company, upon the entire line of said company's road from Fort Wayne in the State of Indiana, to the termination thereof at the city of Chicago, in the State of Illinois, to secure the payment of $1,250,000 of bonds of said company, dated July 1, 1853, with interest at the rate of seven per cent. per annum, payable semi-annually, on the first days of January and July of each year, the principal thereof maturing July 1st, 1873, all of which bonds are outstanding, and there is due for interest thereon to the first day of July, A. D. 1861, $370,260 14, made up as follows:

"Coupons due January 1, 1858	$37,520 00	
Interest to July 1, 1861	9,192 40	
		46,712 40
Coupons due July 1, 1858	37,520 00	
Interest to July 1, 1861	7,879 20	
		45,399 20
Coupons due January 1, 1859	37,520 00	
Interest to July 1, 1861	6,566 00	
		44,086 00
Coupons due July 1, 1859	43,750 00	
Interest to July 1, 1861	6,125 00	
		49,875 00

Coupons due January 1, 1860	43,750 00	
Interest to July 1, 1861	4,593 75	
		48,343 75
49 Coupons due July 1, 1860	43,750 00	
Interest to July 1, 1861	3,062 50	
		46,812 50
Coupons due January 1, 1861	43,750 00	
Interest to July 1, 1861	1,531 25	
		45,281 25
Coupons due July 1, 1861		43,750 00
Total		$370,260 10

"Of which said mortgage the plaintiff, John Ferguson, is grantor in trust, and the same was duly recorded according to law, and is a valid conveyance for the purpose therein mentioned, and is the paramount lien upon the property and franchises thereby conveyed, and entitled to priority in the distribution of the proceeds of any sale thereof, to be made under this decree, over any other lien or claim against the same, subject only to the payment of an equitable part of the costs and expenses of this and other equitable charges provided to be paid by the interlocutory orders heretofore made in this case, so far as the same shall not otherwise be paid or provided for, said proceeds, after defraying costs, expenses, and equitable charges as aforesaid, if not adequate to fully pay the outstanding bonds and interest coupons secured by said mortgages, to be distributed and applied pro rata in payment of the same. And the court doth find that the said consolidated company, the Pittsburgh, Fort Wayne and Chicago Railroad Company, is, by virtue of said contract of consolidation and the statutory provisions concerning the same, bound and liable to pay the principal and interest due, and to become due, of the bonds of the said Ohio and Indiana Railroad Company, and of the said Fort Wayne and Chicago Railroad Company, severally, specified in and secured to be paid by the said four mortgages last above mentioned, and that said consolidated company is in default by the non-payment of the several amounts of interest in arrear and unpaid upon said four last-named mortgages, and by the non-payment of the several amounts of interest in arrear and upaid upon the above-named bonds and mortgages of the Ohio and Pennsylvania Railroad Company, and that said consolidated company, by failing to pay said several amounts of interest, has violated and broken its agreement, in that respect, in said contract of consolidation contained.

"3rd. The court further doth find that the said Pittsburgh, Fort Wayne and Chicago Railroad Company, after it became organized under said contract of consolidation as aforesaid, to wit, on the first day of January, 1857, executed and delivered to the complainants, John Ferguson and Thomas E. Walker, as grantees in trust thereof, a mortgage upon the entire line of its road from Pittsburgh to Chicago, with the equipment, property, and franchises owned and thereafter to be acquired by said company for the use of said road in operating the same, as in said mortgage remaining of record in the recorder's office, where the same has been recorded in counties through which the line of said road passes, (to which records reference is here made for the particulars thereof,) the same appears fully and at large, which said mortgage is conditioned for the payment of the bonds

of said consolidated company to the amount in the aggregate of ten millions ($10,000,000) of dollars, dated January 1st, 1857, bearing interest at the rate of seven per cent. per annum, payable semi-annually, on the first days of January and July of each year, and maturing January 1st, A. D. 1887; that of said bonds $3,500,000 were by said company set apart for purposes of construction, $2,065,000 have been sold, $489,000 hypothecated to secure the floating debt of said company and are outstanding, and $397,000 have been taken up by the receiver as collaterals to debt paid by him, and $266,000 are still held by the company unissued; and the remaining $6,500,000 were reserved to be used for the redemption, by exchanging the same therefor of the bonds issued by the several original companies above mentioned, and are usually called "redemption bonds," of which $2,000 have been issued or disposed of; that there is due for interest on the said bonds of said consolidated company, sold and hypothecated as aforesaid, to the first day of July, A. D. 1861, the sum of $389,343 55, made up as follows on bonds sold:

"On bonds sold:

Coupons due January 1, 1859	$22,750 00	
Interest due July 1, 1861	3,981 25	
		26,731 25
Coupons due July 1, 1859	22,785 00	
Interest to July 1, 1861	3,189 90	
		25,974 90
Coupons due January 1, 1860	53,340 00	
Interest to July 1, 1861	5,600 90	
		58,940 70
Coupons due July 1, 1860	54,635 00	
Interest to July 1, 1861	3,824 45	
		58,459 45
Coupons due January 1, 1861	58,835 00	
Interest to July 1, 1861	2,059 27	
		60,894 27
Coupons due July 1, 1861		62,895 00
		$293,895 57

"On bonds hypothecated:

On coupons due July 1, 1858	$7,910 00	
Interest to July 1, 1861	1,661 10	
		9,571 10
Coupons due January 1, 1858	8,400 00	
Interest to July 1, 1861	1,470 00	
		9,870 00
Coupons due July 1, 1859	9,975 00	
Interest to July 1, 1861	1,396 50	
		11,371 50
Coupons due January 1, 1860	14,770 00	
Interest to July 1, 1861	1,550 85	
		16,320 85
51 Coupons due July 1, 1860	14,770 00	
Interest to July 1, 1861	1,033 90	
		15,803 90

Coupons due January 1, 1861	14,875 00	
Interest to July 1, 1861	520 63	
		15,395 63
Coupons due July 1, 1861		17,115 00
		95,447 98
Total		$389,343 55

"That said mortgage of said consolidated company was duly recorded according to law, and is a valid conveyance for the purpose therein mentioned, and, subject to the prior liens of the respective mortgages of the said several original companies, as herein above declared, is the paramount lien upon the property and franchises thereby conveyed; and that next in order of priority to said prior mortgage of said original companies—the said bonds of said consolidated company, sold and hypothecated as aforesaid, and the unpaid interest thereon accrued and accruing—are entitled to priority in the distribution of the proceeds of any sale of the property covered by the said mortgage of said consolidated company to be made under the decree, which may remain after payment of the costs and expenses of this suit, and other equitable charges provided to be paid by the interlocutory orders heretofore made in this case, to be equitably apportioned between the four divisions of said road, as provided in the preceding part of the decree, not otherwise paid or provided for; and if the residue of said proceeds which shall remain after payment of the said mortgages of the original companies, costs, expenses, and charges as aforesaid, shall not be adequate to fully pay the bonds and interest coupons of the consolidated company, secured by said mortgage of said company, which have been sold and hypothecated as aforesaid, the same shall be distributed and applied, first, in full payment of the interest coupons due and unpaid upon said bonds and interest accrued and accruing upon said coupons; and second, in payment of the principal of said bonds pro rata, one with another, as far as the same will reach. But no greater amount of proceeds shall be applied in payment on said hypothecated bonds than will be adequate to pay the claims for which they are pledged.

"And the court doth further find that, after the making of the said several mortgages by the said original companies, and before said consolidation agreement was entered into, the said original companies severally made additions to and extended their respective roads, and acquired rolling stock and other property, and made additional structures and improvements for the use and convenience of operating said
52 roads severally, and in like manner that the said consolidated company, since said consolidation agreement was entered into, has made additions to and extended its line of road and acquired rolling stock and other property, and has made additional structures and improvements for the use and convenience of operating its said road; and the court doth find and doth order, adjudge, and decree, that the said mortgages of the said original companies do, in law, operate to cover and include, each, severally, *of* much of the said additions and extensions of said road respectively, and other fixed property, structures, and improvements as is situate upon the line of road and at and between the termini thereof of each of said original companies, whether made by the said original companies or by the said consolidated companies; and the said original mortgages in like manner cover and

include, each, severally, all of such acquisitions of rolling stock and other property as by said original companies respectively had been acquired before said consolidation agreement; and in like manner that said original mortgages cover and include all of the said acquisitions of rolling stock and other property acquired by said consolidated company, subject to be apportioned equitably amongst and between said mortgages in the same proportion that the entire property of said original companies, as the same existed at the time of the consolidation, was held and owned by the said companies severally, to be ascertained and determined as hereinafter ordered: Provided, however, that in ascertaining and apportioning to the said original mortgages the said additions to and extensions of said roads, and structures, and improvements made for the use and convenience in operating the same, the whole amount of all balances due to former owners for right of way, whether at Chicago, upon liabilities incurred since the commencement of this suit, or elsewhere, prior thereto, and all balances due upon the bridge bonds (so called) of the Ohio and Pennsylvania Railroad Company, secured by mortgage or deed of trust to Thomas Firth and Reuben Miller, j'r, dated May 6th, 1856, shall be *in*cluded—the sale herein ordered to be made, in so far as regards the premises covered by said mortgage, and so far as regards all rights of way unpaid for, being only of the right in equity of said original and consolidated companies thereto, subject to said mortgage and to liens for unpaid purchase-money for rights of way. And the court doth further find that the said John Furguson and Thomas E. Walker, the grantees in trust of the said mortgage or deed of trust made as aforesaid, by the said Pittsburgh, Fort Wayne and Chicago Railroad Company, since the default aforesaid of said company in the non-payment of the interest in arrear as aforesaid upon the several mortgages aforesaid,

53 have been requested by holders of bonds of said consolidated company exceeding in amount the sum of one hundred thousand dollars, and exceeding in amount one half of all other bonds secured by all the other mortgages by the said original companies severally, to enter upon and sell all and singular the mortgaged premises in the said mortgage of said consolidated company specified, granted, and conveyed, and that a like request has been made of the several grantees in trust of the said several mortgages made as aforesaid by the several original companies surviving.

"Whereupon it is ordered, adjudged, and decreed by the court that the said Pittsburgh, Fort Wayne and Chicago Railroad Company, on or before the second day of July next, pay into the hands of the receiver, in this case, the said several amounts of money herein above found to be due and unpaid for interest upon the several bonds of the said several original companies, or that shall become due within the time limited for such payment, with interest thereon until paid, secured by the several mortgages of said original companies as aforesaid; also, that said Pittsburgh, Fort Wayne and Chicago Railroad Company, within the same time, pay into the hands of said receiver the amounts of money herein above found to be in arrear and unpaid for interest upon the bonds of said company, or that shall become due within the time limited for such payment, with interest thereon, secured by the mortgage aforesaid of said company, and which have been sold and hypothecated as aforesaid, to be held subject to the further order of this court, to be made in conformity with the facts, and equitable rights and priorities as herein above found by the court; and, in default of such payment, it is further ordered, adjudged, and decreed by the court, that the said railroad of the said Pittsburgh, Fort Wayne and Chicago Railroad Company, the

right of way therefor, the road-bed thereof, the superstructures of all sorts thereon, its water and other station houses and shops, and the lands and grounds connected therewith, and all tools, implements used or provided to be used therein, and in constructing and repairing cars and machinery for said road, or the track and superstructure aforesaid, all turn-tables, all depots, and buildings, and fixtures, and structures of whatever name and nature, and the lands and grounds connected therewith, used or provided to be used in operating said road, and wherever situate, and all cars, engines, and rolling-stock belonging to said company, and all supplies of timber, lumber, iron, fuel, and every other thing provided by said company, and by the said original companies severally, to be used in operating said road, wherever situate, by the same title by which the same are holden by said company and by the said original companies severally, together with all corporate
54 franchises of said company, and of the said original companies severally, including the right and franchise of said several companies to be and act as a corporation, be sold as herein ordered and directed, and as an entirety, the same being, in the opinion and judgment of this court, incapable of being sold separately, without waste and material injury to the value thereof, and that the same be sold without appraisement.

And the court doth order and direct that all and singular the property and effects, and rights and franchises of said Pittsburgh, Fort Wayne and Chicago Railroad Company, and of the said several original companies, so ordered to be sold as aforesaid, shall be sold by complainants, John Ferguson and Thomas E. Walker, the said grantees in trust of the said mortgage or deed of trust, made as aforesaid by the said Pittsburgh, Fort Wayne and Chicago Railroad Company, in their said capacity as trustees, and as special master commissioners of this court, and to this end, the said John Ferguson and Thomas E. Walker, or the survivor of them, in case of the death of either of them, are hereby constituted and appointed special master commissioners in the case, with full power as such, and in their said capacity as trustees, to execute and carry into effect the order of sale now here made, and to do and perform all such other matters and things as shall be ordered and required of them in this behalf.

"And for their services under this order, there shall be allowed and paid to them out of any money in the*ir* hands of the receiver, or to come to his hands, the sum of five thousand dollars, to be divided between them as may be equitable, regard being had to the services to be rendered by them severally in the premises.

"And the court doth further order, adjudge, and decree that the said special master commissioners and trustees, before offering said property, franchises, and premises for sale, shall first advertise the time and place of the sale thereof, setting forth in such advertisements a concise and pertinent designation of the subject-matter to be sold in three principal daily newspapers, printed in the cities of New York, Albany, Boston, Philadelphia, Pittsburgh, Baltimore, Washington City, and Chicago, to be continued for not less than twenty days, the said Pittsburgh, Fort Wayne and Chicago Railroad Company, by resolution of its board of directors, having assented thereto, and in one paper in the city of Cleveland, in the State of Ohio, not less than thirty days, which sale shall be made by public auction, at the court-house of this court, in the city of Cleveland, in the State of Ohio, to the highest bidder for cash in hand, but for not less than the sum of five hundred thousand dollars.

55 "It is further ordered, that it shall be competent for the said

special master commissioners and trustees, or the survivor of them as aforesaid, in their or his discretion, to keep open the biddings at the place of sale, to be advertised as aforesaid, after publicly opening the same at the time and place appointed, by adjournment, from time to time, during a period of not less than twenty days, inclusive of the first day so to be appointed. And for these purposes an order shall be issued by the clerk, under the seal of this court, embodying so much of this decree, in substance, as relates to duties of the said special master commissioners and trustees, and directing and requiring them to carry the same into execution, and return the same, with a report of their doings under the same, to this court. And if, for any cause, said special master commissioners and trustees shall not make sale of said property and franchises, upon the order so to be issued, a further order or orders for the same purpose may be issued by the clerk, upon the written request of counsel for complainants, until a sale shall be effected in the manner aforesaid, and the same be confirmed by the court.

"And it is hereby reserved, that it may and shall be competent for the court, for good cause, at any time hereafter, upon return of any order of sale to be issued as aforesaid, (no sale being made pursuant thereto) to modify the terms and condition of sale herein prescribed, as to the court shall appear just and expedient. And upon the report of a sale, the court, by an order to be made in the premises, may confirm, or for good cause shown, may set aside the same, and direct the same to be again offered and put to sale, and upon confirmation by the court, of any sale to be made as aforesaid, it is further adjudged and decreed by the court, that the purchaser or purchasers, upon full compliance with the conditions of sale, and the orders of the court, made or to be made herein, touching the payment of the purchase-money, shall be entitled to take and hold, and the same again to sell or otherwise dispose of, at pleasure, all of the said property, rights, franchises, and the appurtenances thereof, so as aforesaid ordered to be sold, by the same title by which the same are or were, at any time, before said sale, owned, claimed, or held by the said Pittsburgh, Fort Wayne and Chicago Railroad Company, and by each and all of said original railroad companies so consolidated as aforesaid, free and discharged from the lien of each and all of the mortgages in the decree above-mentioned, made by the said consolidated company, and by said original companies severally, and free and discharged from all liability for any debt or debts, claim or claims of whatever name or nature, in behalf of any and all persons against said consolidated and original companies, or any of them, and
56 from the claims of all persons, for or on account of capital stock now held or claimed in any of said companies, but subject nevertheless, to the lien, if any such exists, in behalf of any vendor or former owner thereof, upon any real estate to be included in said sale, for purchase-money of such real estate, not otherwise provided to be paid by this decree out of the proceeds of such sale, or otherwise, by the former orders made in this case, including the right of way and depot grounds, and lots and premises purchased since the pendency of this suit, by the agency of the receiver in this cause in this city and vicinity of Chicago, and subject to the lien of said mortgage for the unpaid residue of the "bridge bonds" and interest coupons thereto annexed, which remain unpaid upon the premises conveyed in trust to the said Thomas Firth and Reuben Miller, j'r, above herein referred to. But it is hereby decreed that the purchaser or purchasers at said sale, shall not incur any personal liability to pay the said bridge bonds and coupons or money due to third persons for rights of way, including the rights of way and

depot grounds, and lots, and premises purchased since the pendency of this suit, in the city and vicinity of Chicago, or for any other liability of the said companies or any of them.

"And upon confirmation of said sale, the said receiver shall surrender and deliver over to the purchasers, or their assigns, all of the said property and the appurtenances thereof, so ordered to be sold as aforesaid, but subject to be redelivered into the receiver, upon the further order of the court, to be resold at the risk of said purchasers, if default be made on their part to comply with the terms of their purchase; and upon full payment of the purchase-money, and compliance with the terms of their purchase by said purchasers, to be found by the further order of this court to be made in the premises, the said special master commissioners and trustees in their said several capacities, or the survivor of them, shall by deed, to be executed in such form as may be proper to convey real estate in the said several States of Pennsylvania, Ohio, Indiana, and Illinois, convey the premises so to be sold to the purchasers, their heirs, or successors, or assigns, and thereupon also the said Pittsburgh, Fort Wayne and Chicago Railroad Company, shall by like deed convey and confirm said premises to said purchasers, their heirs, successors or assigns,

"And the court doth further order that the distributable parts of the proceeds of said sale, which upon the footing of this decree, shall inure to the benefit of the several mortgages hereinbefore mentioned, made by said several original companies, shall be ascertained by Thomas D. Messler and W'm S. Chamberlain, who are hereby appointed
57 special master commissioners in this behalf, who shall take an account of the property and effects of every description included in said sale, which before said consolidation belonged to each of said original companies, and a like account of the property and effects of said consolidated company, included in said sale, acquired since said consolidation, and determine the relative values thereof, and shall apportion the gross proceeds of said sale, in proportion to the said relative values of said property and effects, amongst and between the said original companies and the said consolidated company, to the end that the same may be distributed and applied in conformity with the principles of this decree, as by the further order of the court to be made herein shall be equitable.

"And all questions arising in this cause not herein or heretofore adjudicated in this court, are reserved for further consideration. Also, it is further reserved, that all errors which have intervened in the statement of sums and amounts, or in calculations on which such statements are founded in the decree contained, and all clerical errors therein, may and shall be corrected upon the order of the court, to be made upon the motion of any party interested in the same. Also, it is reserved that this decree shall be opened and set aside on the motion of the Pittsburg, Fort Wayne and Chicago Railroad Company, and without any shewing of cause, at any time prior to or within the first ten days of the next regular July term of this court, and the same right is reserved to the complainants at any time before a sale made under this decree."

Whereupon it is ordered, adjudged, and decreed by the court, that the said decree of the said circuit court of the United States for the northern district of Ohio, be, and the same is hereby, in all things, adopted as the decree of this court in this case, in so far as respects that part of the said railroad and property of the said Pittsburgh, Fort Wayne and Chicago Railroad Company in said decree referred to, which is situate

within the jurisdiction of this court, and the court doth order, adjudge, and decree that said railroad and property situate within the jurisdiction of this court as aforesaid, with all and singular the corporate franchises of said company, and of said original companies appertaining thereto, shall be sold by the said master commissioners and trustees named and appointed in said recited decree, to make sale of the premises in and by said decree ordered to be sold, and that they sell the same in conformity with said decree, in connection with and as part and parcel of the premises so ordered to be sold, and to that end that a decretal order be issued by the clerk under the seal of this court to the said master commissioners and trustees, or the survivor of them, in conformity with this decree, to be returned by them, or the survivor of them, to this court, with the report of their doings in obedience thereto.

58 And the court further order that the proceeds of any sale to be made in the premises as herein contemplated, be accounted for, disbursed, and paid over, as by the said circuit court of the United States for the northern district of Ohio, the same shall be ordered; also, that upon confirmation by said court of any such sale, and upon the execution and delivery of deeds of conveyance for the property and franchises sold in pursuance of the said decree of said court, or any further orders to be made by said court in the premises, all of the right, title, and estate of the said Pittsburgh, Fort Wayne and Chicago Railroad Company, and of the said original companies within the jurisdiction of this court, and the franchises of each and all of said companies connected therewith, shall pass thereby to and rest in the grantees of such deeds of conveyance.

And further it is ordered that the costs in this case, including reasonable fees to the counsel of the several parties for their services herein, to be taxed by the clerk, be certified under the seal of this court, to the said circuit court for the northern district of Ohio, to the end that the payment thereof may be provided for by the order of said court, to be made out of the funds subject to its order in said original cause; and in regard to the costs and fees so to be certified, the right is by the court here reserved to make such further order as may be necessary to enforce the due payment thereof, if the same be not paid as in this order is above contemplated.

And further, all other questions not herein or heretofore adjudicated by this court in this cause, which may be necessary to the proper adjudication of the rights of any of the parties interested, arising upon the pleading, are reserved for further consideration and adjudication by the court; and whereas it is represented to the court by the parties to this suit, that said decree of the circuit court of the United States for the northern district of Ohio will probably be set aside, and reëntered in that court, in order that an agreement of two-thirds or more of the creditors and stockholders of said company may be first filed in said court, pursuant to an act of the general assembly of the State of Ohio, entitled "An act to regulate the sale of railroads, and the reorganization of the same," passed April 11th, 1861, with such modifications as to the time as may thereby become necessary.

It is now here ordered and adjudged by the court, that if said decree be thus set aside and reëntered, this decree shall not thereby be vacated, but shall remain in full force as auxiliary to the decree so reëntered, and shall be executed and have as full effect as though said decree, instead of being so vacated and reëntered, had been originally

59 rendered in form and substance as the same may be so reëntered,

and as though the same were herein inserted verbatim, and adopted and approved by the court.

NORTHERN DISTRICT OF ILLINOIS, *ss :*

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify the above and foregoing to be a true, full, and complete copy of a decree of said court in chancery, sitting at Chicago, in said district, on Wednesday, July 31st, 1861, in a certain cause wherein Charles Moran et al., were complainants, and the Pittsburgh, Fort Wayne and Chicago Railroad Company et al. are defendants.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this twenty-third day of July, in the year of our Lord one thousand eight hundred and sixty-two, and of our independence, the eighty-sixth year.

[SEAL.] W'M H. BRADLEY, *Clerk.*

60 ORDERS CONFIRMING THE SALE.

Order of court in Pennsylvania.

CHARLES MORAN AND LOUIS A. VON HOFFMAN et al.
vs.
THE OHIO & PENN'A RAILROAD COMPANY, et al.
} In chancery.

John Ferguson and Thomas E. Walker, grantees in trust and master commissioners in the case, having returned into court our order to them directed for this sale of the property and franchises in said order specified, with their report thereto annexed, whereby it appears that, in obedience to said order, they had caused said property and franchises to be advertised for sale, as by said order they were directed and required. And that, in pursuance of said advertisement, they did, on the 24th day of October, A. D., 1861, at the court-house of the circuit court of the United States for the northern district of Ohio, in the city of Cleveland, in the State of Ohio, expose said property and franchises to sale by public auction, and that James F. D. Lanier, John Edgar Thomson, Samuel J. Tilden, Louis H. Meyer, and Samuel Hanna, as agents and trustees and attorneys-in-fact of various persons, who have united in an agreement to complete the said sale through and by means of said agency, then and there bidding therefor the sum of two millions of dollars, and their said bid being more than the minimum sum of $500,000 in the order of sale prescribed, and being the highest and best bid, they had struck and sold the same to them at their said bid.

Whereupon the court doth find the said sale and proceedings were had and made in conformity with law, and in accordance with the requirements of said order of sale.

It is therefore by the court here ordered that said sales, in so far as regards that part of the said property and franchises which are situate within the territorrial jurisdiction of this court, be, and the same is hereby, approved and confirmed by the court.

61 UNITED STATES OF AMERICA,
Western District of Pennsylvania, ss :

I, Henry Sproul, clerk of the circuit court of the United States for the

western district of Pennsylvania, do hereby certify that the foregoing is a true and correct copy of the order of sale made in the foregoing cause, and also a true copy of order confirming the sale, the same as they remain on file and of record in this court.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of the said court at Pittsburgh, this 11th day of September, A. D., 1862, and of the independence of the United States, the eighty-sixth.

[SEAL.] H. SPROUL, *Clerk.*

Order of court in Indiana.

The following are the proceedings had in part for the circuit court of the United States for the seventh judicial circuit and district for the State of Indiana, confirming the decree of sale of the circuit court for the northern district of Ohio:

And afterwards, to wit, on the 18th day of November, in the year aforesaid, at the circuit court of the United States, begun and holden at Indianapolis, in the district of Indiana, before the Hon. Samuel H. Treat, district judge of the United States, the said master commissioners filed their report of sale herein, upon which the court made the following order, to wit:

"John Ferguson and Thomas E. Walker, grantees in trust and master commissioners in this case, having returned into court our order to them directed for the sale of the property and franchises in said order specified, with their report thereto annexed, whereby it appears that, in obedience to said order, they have caused said property and franchises to be advertised for sale, as by such order they were directed and required, and that, in pursuance of said advertisement, they did, on the 24th day of October, A. D. 1861, at the court house of the circuit court of the United States for the northern district of Ohio, in the city of Cleveland, in the State of Ohio, expose said property and franchises to sale by public auction, and that James F. D. Lanier, John Edgar Thomson, Samuel J. Tilden, Louis H. Meyer, and Samuel Hanna, agents and trustees and attorneys-in-fact of various persons who had united in an agreement to compete at said sale, through and by means of said agency, then and
62 there bidding therefor the sum of two millions of dollars, and their said bid being more than the minimum sum of $500,000, in the order of sale prescribed, and being the highest and best bid therefor, they had struck off and sold the same to them at their said bid. Whereupon the court doth find that said sale and proceedings were had and made in conformity with law, and in accordance with the requirements of said order of sale.

It is therefore by the court here ordered that said sale, in so far as regards that part of the said property and franchises which are situate within the territorial jurisdiction of this court, be, and the same is hereby, approved and confirmed.

UNITED STATES OF AMERICA,
District of Indiana, ss:

I, John H. Rea, clerk of the circuit court of the United States within and for the seventh judicial circuit and district of Indiana, do hereby certify the above and foregoing to be a true and correct copy of the auxiliary decree entered on the 12th day of July, A. D. 1861, and also of the order of court confirming report by master commissioners, filed

on the 18th November, in the year aforesaid, in the foregoing entitled cause, as the same now appears of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Indianapolis, this 16th day of September, A. D. 1862, and of the independence of the United States of America the eighty-seventh.

[SEAL.] JOHN H. REA, *Clerk.*

Order of court in Illinois.

In circuit court of the United States of America for the northern district of Illinois, in chancery sitting, at Chicago, in said district, on Friday, the eighth day of November, A. D. eighteen hundred and sixty-one.

CHARLES MORAN, LOUIS A. VON HOFFMAN, et al., *vs.* OHIO & PENNSYLVANIA RAILROAD COMPANY et al. } In chancery.

Present, the Hon. Thomas Drummond, judge.

John Ferguson and Thomas E. Walker, grantees in trust and master commissioners in this case, having returned into court our order to them directed for the sale of the property and franchises in said order specified, with their report thereto annexed, whereby it appears that,
63 in obedience to said order, they had caused said property and franchises to be advertised for sale, as by said order they were directed and required, and that, in pursuance of said advertisement, they did, on the twenty-fourth day of October, A. D. 1861, at the court-house of the circuit court of the United States for the northern district of Ohio, in the city of Cleveland, in the State of Ohio, expose said property and franchises to sale at public auction, and that James F. D. Lanier, John Edgar Thomson, Samuel J. Tilden, Louis H. Meyer, and Samuel Hanna, as agents and trustees and attorneys-in-fact of various persons who have united in an arrangement to compete at said sale, through and by means of said agency, then and there bidding therefor the sum of two millions of dollars, and their said bid being the highest and best bid therefor, and more than the minimum sum of five hundred thousand dollars in the order of sale prescribed, they had struck off and sold the same to them at their said bid. Whereupon the court doth find that said sale and proceedings were had and made in conformity with law, and in accordance with the requirements of said order of sale. It is thereupon by the court here ordered that said sale, in so far as regards that part of said property and franchises which are situate within the territorial jurisdiction of this court, be, and the same is hereby, approved and confirmed.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss :

I, William H. Bradley, clerk of the circuit court of the United States of America, for said district, hereby certify the above and foregoing to be a true and correct copy of the order of said court in chancery sitting, made and entered of record on the 8th day of November, A. D. 1861, in said entitled cause, wherein Charles Moran and others are complainants, and the Pittsburgh, Fort Wayne and Chicago Railroad Company

and Thomas Scott are defendants, as the same remains of record in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this 17th day of September, A. D. 1862, and of our independence the eighty-sev. enth.

[SEAL.] WM H. BRADLEY, *Clerk.*

64 Sale made and deed dated February 18th, 1862; executed by commissioners to individuals offered as follows:

This indenture, made the eighteenth day of February, in the year of our Lord one thousand eight hundred and sixty-two, between John Ferguson and Thomas E. Walker, trustees and special master commissioners, as hereinafter mentioned, of the first part, and James F. D. Lanier, Samuel J. Tilden, Louis H. Meyer, of the city and State of New York; John Edgar Thomson, of the city of Philadelphia, and State of Pennsylvania; and Samuel Hanna, of the town of Fort Wayne, and State of Indiana, of the second part, witnesseth:

That, whereas the Pittsburgh, Fort Wayne and Chicago Railroad Company, a corporation existing under and by virtue of the laws of the States of Pennsylvania, Ohio, Indiana, and Illinois, did cause to be made and delivered to the parties of the first part hereto, of the city, county, and State of New York, a certain deed of trust or mortgage, bearing date on the first day of January, A. D. 1857, whereby the said company granted and conveyed unto the said parties of the first part thereto, their heirs and assigns, the entire railroad of the
65 said company, from its terminus in the city of Pittsburgh to its terminus in the city of Chicago, and all the property and effects, rights, and franchises, in the said deed of trust or mortgage mentioned, and hereinafter particularly described on the trusts, and for the purposes following, (among others,) that is to say: if the interest on the bonds therein mentioned should not be paid by the said company when the same should fall due, and if such interest should remain in arrear for three months, then at any time after such default, upon the request of the holders of one hundred thousand dollars in amount of the said bonds, the said parties of the first part hereto should enter upon, and take possession of and sell, all and singular, the said premises by the said deed or mortgage conveyed, or transferred, or expressed, or intended so to be, first giving notice by advertisement in three principal daily newspapers, printed in the cities of New York, Albany, Boston, Philadelphia, Pittsburgh, Baltimore, Washington, and Chicago, to be continued for sixty days, or such shorter time, not less than twenty days, as the said company might by resolution of their board of directors assent to, and upon such sale execute a full and legal conveyance of all and singular the premises sold:

And whereas the said company failed to pay the interest on the said bonds which fell due on the first days of January and July, 1859, on the first days of January and July, 1860, and on the first days of January and July, 1861, and all such interest has remained in arrear for more than three months, and is still unpaid:

And whereas the said John Ferguson and Thomas E. Walker, grantees in trust, as aforesaid, have been duly requested by holders of bonds secured by the said deed of trust or mortgage exceeding in amount the sum of one hundred thousand dollars to enforce and exercise the powers of entry and sale contained in and conferred upon them by the said deed of trust or mortgage:

And whereas, for the purpose of enforcing the rights of the holders of the bonds secured by the aforesaid deed of trust or mortgage, as well as of the holders of the bonds secured by the several deeds of trust or mortgages creating prior liens upon parts of the railroad and property in the said first-mentioned deed of trust or mortgage described, a suit in chancery was instituted in the circuit court of the United States for the northern district of Ohio, in which Charles Moran and others were complainants, and the Pittsburgh, Fort Wayne and Chicago Railroad Company and others were defendants, and in which suit the parties hereto of the first part also became parties complainant; and auxiliary
66 suits were also instituted between the same parties in the circuit courts of the United States for the western district of Pennsylvania, for the district of Indiana, and for the northern district of Illinois:

And whereas, at a term of the circuit court of the United States for the northern district of Ohio, begun and held at the city of Cleveland, in the said district, on the 12th day of March, A. D. 1861, in and by a decree of the said court, entered June 10th, 1861, in the aforesaid suit, it was adjudged and decreed, among other things, that the said Pittsburgh, Fort Wayne and Chicago Railroad Company was in default in respect to the several instalments of interest mentioned in the said decree upon the aforesaid bonds, and in respect to the several instalments of interest also mentioned in the said decree upon the bonds secured by prior liens:

And it was further ordered, adjudged, and decreed, that the said Pittsburgh, Fort Wayne and Chicago Railroad Company should pay, on or before the second day of July then next following, the moneys so found to be due and unpaid, and unless the said company should so pay the same, the property and effects, rights and franchises of the said company in the said decree mentioned, and hereinafter particularly described, should be sold as in the said decree ordered and directed:

And whereas decrees were also made in the said auxiliary suits then pending in the circuit courts of the United States for the western district of Pennsylvania, the district of Indiana, and the northern district of Illinois, respectively, between the same parties, in all things adopting the said decree of the circuit court for the northern district of Ohio, as the decree of the said several courts respectively, in so far as respects those parts of the railroad and property of the said Pittsburgh, Fort Wayne and Chicago Railroad Company in the said decrees respectively referred to, which are situate in the territorial jurisdiction of the said several courts respectively:

And whereas the said Pittsburgh, Fort Wayne and Chicago Railroad Company wholly failed to make the said payments decreed to be made as aforesaid:

And whereas the said courts did further order and direct that all and singular the said property and effects, rights, and franchises, should be sold by the said John Ferguson and Thomas E. Walker, the grantees in trust of the said mortgage or deed of trust made by the said Pittsburgh, Fort Wayne and Chicago Railroad Company, bearing date on the first day of January, 1857, and in said decree mentioned, in their said capacity of trustees and also of special master commissioners of the said courts, and to that end did, in and by the said decree,
67 constitute and appoint the said John Ferguson and Thomas E. Walker special master commissioners in the said suits, with full power as such, as well as in their said capacity as trustees, to execute and carry into effect the orders of sale then made in and by the said decrees; and further directed that such sale should be made by public

auction, at the court-house of the said circuit court of the United States for the northern district of Ohio, in the city of Cleveland, in the State of Ohio, to the highest bidder, for cash in hand, but not for less than the sum of five hundred thousand dollars, after advertisements of the said sale in three principal daily newspapers printed in the cities of New York, Albany, Boston, Philadelphia, Pittsburgh, Baltimore, Washington City, and Chicago, for not less than twenty days, the said Pittsburgh, Fort Wayne and Chicago Railroad Company, by resolution of its board of directors, having assented to such period of notice as found in and by the said decree:

And whereas, in and by the said decree, it was further adjudged and decreed that, upon confirmation by the court of the said sale so to be made as aforesaid in pursuance thereof, the purchaser or purchasers, upon full compliance with the condition of sale and the orders of the court made or hereafter to be made in the said cause touching the payment of the said purchase-money, should be entitled to take and hold, and the same again to sell or otherwise dispose of at pleasure, all of the said property, rights, franchises, and the appurtenances thereof, by the said decree, so as aforesaid ordered to be sold by the same title by which the same were, at any time before said sale, owned, claimed, or held by the said Pittsburgh, Fort Wayne and Chicago Railroad Company, and by each and all of the said original railroad companies which were consolidated into the said Pittsburgh, Fort Wayne and Chicago Railroad Company, free and discharged from the lien of each and all of the mortgages in the said decree mentioned, made by the said consolidated company and the said original companies severally; and free and discharged from all liability for any debt or debts, claim or claims, of whatsoever name or nature, in behalf of any and all persons against said consolidated and original companies, or any of them, and from the claims of all persons for or on account of capital stock now held or claimed in any of the said companies; but subject, nevertheless, to the lien, if any such exists, in behalf of any vendor or former owner thereof upon any real estate included in said sale for purchase-money of such real estate, not otherwise provided to be paid by the said decree out of the proceeds of such sale, or otherwise, by the former orders made in the said cause, including the rights of way and depot grounds,
68 and lots and premises purchased since the pendency of the said suit by the agency of the receiver in the said causes, in the city and vicinity of Chicago, and subject as to so much of the said railroad lying between Federal-street station, in Allegheny City, in the State of Pennsylvania, and the passenger depot of the Pennsylvania Railroad, on Liberty street, in the city of Pittsburgh, in said State, and of the other property connected therewith, as is embraced within a certain mortgage made by the Ohio and Pennsylvania Railroad Company to Thomas Firth, of the city of Philadelphia, and Reuben Miller, j'r, of the city of Pittsburgh, bearing date May 6th, 1856, to the lien created by the said last-mentioned mortgage:

And whereas, pursuant to the said decrees, orders were duly issued by the said courts to the said John Ferguson and Thomas E. Walker, embodying so much of the said decrees in substance as relates to the duties of the said trustees and special master commissioners, and directing and requiring them to carry the same into execution:

And whereas, in conformity with the said orders, the said John Ferguson and Thomas E. Walker, in their capacity as grantees in trust of the said deed of trust or mortgage, made by the Pittsburgh, Fort Wayne and Chicago Railroad Company, and as special master commis-

sioners as aforesaid, caused the said property and effects, rights, and franchises, hereinafter mentioned and described, to be advertised in the manner and for the period directed by the said decrees and orders of sale respectively, to be sold as an entirety:

And whereas the said John Ferguson and Thomas E. Walker, trustees and special master commissioners as aforesaid, and parties of the first part to these presents, in pursuance of the said deed of trust or mortgage, and the power of sale therein contained, and of the said decrees and orders of the said courts, did, on the 24th day of October, A. D, 1861, expose for sale at public auction, at the court-house of the circuit court of the United States for the northern district of Ohio, in the city of Cleveland, in the State of Ohio, the said railroad property and effects, rights, and franchises, hereinafter particularly described, at which sale, the said property and effects, rights and franchises, were struck off to said parties of the second part to these presents, for the sum of two millions of dollars, that being the highest and best bid therefor:

And whereas, in and by the said decree, the said circuit court of the United States for the northern district of Ohio, did further order that the purchase-money so bid by said purchasers, be paid into the hands of William B. Ogden, in his capacity of receiver in the said cause;
69 to be by him held, applied, disbursed, and paid over, as by the said court he should be ordered and required:

And whereas it was made to appear to the said court that the said purchasers had paid to the said receiver the said purchase-money by them bid as aforesaid, in conformity with the terms of the said order:

And whereas the said John Ferguson and Thomas E. Walker, grantees in trust and special master commissioners as aforesaid, did, on the said 24th day of October, 1861, return the said order of sale, with their report of their proceedings had in pursuance thereof, thereto annexed, to the said circuit court of the United States for the northern district of Ohio, and have also duly returned the said orders of sale made in the said auxiliary causes, to the said several courts named in the said orders respectively, together with their reports of their proceedings had in pursuance thereof, thereto annexed, respectively:

And whereas upon said report returned to the said circuit court of the United States for the northern district of Ohio, the said court having inspected said report and proceedings of said grantees in trust and special master commissioners, did find, in and by a decree entered October 24th, 1861, in the said cause, that the sale and proceedings were in all things had and made according to law, and in conformity with the order and decree of the said court in that behalf, and did approve and confirm the same, and upon the said reports returned in the said several auxiliary causes respectively, the said circuit courts for the western district of Pennsylvania, for the district of Indiana, and for the northern district of Illinois, did also find that the said sale and proceedings were in all things had and made according to law, and in conformity with the orders and decrees of the said several courts respectively in that behalf, and did in like manner approve and confirm the same:

And whereas it was further ordered by the said courts, in and by the said decrees, that the said special master commissioners and trustees, in their said several capacities, should convey the said property and franchises to said purchasers upon their request, in conformity with the former orders of the said courts in the premises:

And whereas the said purchasers have duly requested the said trus-

tees and special master commissioners, in their said several capacities, to convey the said property and franchises to the said purchasers, in conformity with the said orders:

Now, therefore, this indenture witnesseth: That the said John
70 Ferguson and Thomas E. Walker, parties of the first part to these presents, in their several capacities as trustees and special master commissioners, as aforesaid, in order to carry into effect the said sale so made as aforesaid, in pursuance of the power of sale and of the decrees and orders above mentioned, and in consideration of the premises, and of the sum of one dollar to them in hand paid by the said parties of the second part hereto, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell, and convey unto the said James F. D. Lanier, Samuel J. Tilden, Louis H. Meyer, John Edgar Thomson, and Samuel Hanna, the parties of the second part, as joint tenants, and not as tenants in common, and to the survivors and survivor, of the said parties of the second part, and to the heirs and assigns of such survivors and survivor, all and singular, the railroad of the said Pittsburgh, Fort Wayne and Chicago Railroad Company, including the right of way therefor, the road-bed thereof, the superstructures of all sorts thereon, its water and other station houses and shops, and the lands and grounds connected therewith, and all tools and implements used or provided to be used therein and in constructing and repairing cars and machinery for said road or the track and superstructures aforesaid; all turn-tables, all depots and buildings, and fixtures and structures, of whatever name or nature, and the lands and grounds connected therewith, used or provided to be used in operating said road, and wherever situate, and all cars, engines, and rolling stock belonging to the said company; and all supplies of timber, lumber, iron, fuel, and every other thing, provided by said company, and by the original companies, severally, which were consolidated into the said Pittsburgh, Fort Wayne and Chicago Railroad Company, to be used in operating said road, wherever situate, by the same title by which the same were holden by said company, and by the said original companies severally, together with all corporate franchises of said company, and of the said original companies severally, including the right and franchise of said several companies to be and act as a corporation; and also all and singular the property of every name and nature, and all rights, privileges, and franchises, conveyed by or embraced within the said mortgage or deed of trust made by the said Pittsburgh, Fort Wayne and Chicago Railroad Company, to the said John Ferguson and Thomas E. Walker, which the said parties of the first part as trustees, under and by virtue of the said deed or mortgage, might or could lawfully or rightfully sell and convey, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversions, remainders, tolls, incomes,
rents, issues, and profits thereof; and also all the estate, right, title,
71 interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, and to the same, and any and every part thereof, with the appurtenances; subject, nevertheless, as to so much of the said railroad lying between the Federal-street station, in Allegheny City, in the State of Pennsylvania, and the passenger depot of the Pennsylvania Railroad on Liberty street, in the city of Pittsburgh, in said State, and of the other property connected therewith as is embraced within a certain mortgage made by the Ohio and Pennsylvania Railroad Company, to Thomas Firth, of the city of Philadelphia, and Reuben Miller, jr., of

the city of Pittsburgh, bearing date May 6th, 1856, to the lien created by the said mortgage, and subject also to the rights of way, depot grounds, lots, and premises, in the city and vicinity of Chicago, purchased since the pendency of the said suit, in which Charles Moran and others, are complainants, and said Pittsburgh, Fort Wayne and Chicago Railroad Company and others, are defendants, as aforesaid, by the agency of the receiver in the said causes, to the lien of the vendors for the purchase-money of the same; and subject, also, as to any real estate included by the aforesaid sale by the said trustees and master commissioners, to the lien, if any such exists, of any vendor or former owner of said real estate not otherwise provided, to be paid by the decrees or orders in the said causes:

To have and to hold the same, with the appurtenances, subject as aforesaid unto the said parties of the second part, as joint tenants, and not as tenants in common; and to the survivors and survivor of the said parties of the second part, and to the heirs and assigns of such survivors and survivor, to the only proper use and benefit and behoof of the said parties of the second part, and of the survivors and survivor of the said parties, and of the heirs and assigns of such survivors and survivor, forever, as fully and completely as the said parties of the first part, by virtue of the deed of trust or mortgage held, and by virtue of their powers as trustees under the said deed as special master commissioners as aforesaid, can or could sell and convey the said premises, property, and franchises, and not otherwise.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

[SEAL.] JOHN FERGUSON,
Trustee and Special Master Commissioner.

[SEAL.] THOMAS E. WALKER,
Trustee and Special Master Commissioner.

Signed, sealed, and delivered in the presence of—
JOHN RANKIN, JR., AND JAMES FARRELLY.

72 The foregoing deed was duly acknowledged on the 18th day of February, 1862, before a commissioner of deeds for the States of Pennsylvania, Ohio, and Indiana, and before a notary public of the city and county of New York.

An act of the general assembly of the Commonwealth of Pennsylvania, approved March 31, 1860, (Penn'a Pamph. Laws, page 498,) as follows:

73 AN ACT to provide for the reorganization of the Pittsburgh, Fort Wayne and Chicago Railroad Company.

SECTION 1. *Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania, in general assembly met, and it is hereby enacted by the authority of the same,* That, in case the railroad of the Pittsburgh, Fort Wayne and Chicago Railroad Company, or any part thereof, shall be sold by virtue of any mortgage or mortgages, or deed or deeds of trust, either by foreclosure or other proceedings in law or in equity, or by advertisement, in pursuance of a power or authority in such mortgage or mortgages, or deed or deeds of trust contained, the persons for or on account of whom the purchase or purchases at any such sale or sales shall have been made, or the survivors of them, shall be, and they are hereby, constituted a body politic or corporate, in deed

and in law; and they shall meet in the city of Pittsburgh within thirty days after the conveyance or conveyances shall have been delivered to such purchasers, and elect directors, (notice of such meeting and election signed by purchasers at said sale or sales, or the survivors of them, and published in two daily newspapers in said city, for five days previous to said meeting, having been given,) at which first election all the persons for or on account of whom the said purchase or purchases shall have been made, shall be entitled to vote in the proportion of one vote to each one hundred dollars of par value which they may have contributed in bonds entitled to distributive shares, in the proceeds of such sale or sales, or in cash towards the said purchase or purchases; and all persons holding bonds secured by any mortgage or trust deed, prior in lien to those by virtue of which such sale or sales shall have been made, shall also be entitled to one vote for every one hundred dollars of the par value of the said bonds by them respectively held; and
74 the said election may be made by such of the aforesaid persons as may attend the same, or be represented thereat by proxy; and the said meeting may adopt such regulations and by-laws as they may deem proper for the organization of the said corporation; and the number of directors may then be fixed, subject to be afterwards altered at any annual meeting of the stockholders; and the directors so elected shall continue such until the next annual meeting, the time for which may also be fixed as aforesaid; and at least three fourths of the directors of the said company shall be residents of the States within which said road is located; and it shall be the duty of such corporation, within thirty days after its organization, to make a certificate thereof, under its common seal, attested by its president and secretary, specifying the date of such organization, and the names of its directors, and to transmit the said certificate to the secretary of the Commonwealth, at Harrisburg, to be filed in his office, and a certified copy thereof shall be evidence of the existence of the said corporation, and of its formation pursuant to this act.

SECTION. 2. The said corporation, formed pursuant to this act, shall have power to acquire, by purchase or otherwise, and to hold, use, and enjoy the Pittsburgh, Fort Wayne and Chicago Railroad, and each and every part thereof, whether situate within or without this Commonwealth, and all equipment, machinery, tools, and materials, all lands, property, franchises, rights, and things connected therewith, or necessary or convenient to the use thereof, together with the tolls, income, rents, issues, and profits of the same, and shall have power to maintain and operate the same as fully as might have been done by the Pittsburgh, Fort Wayne and Chicago Railroad Company, and to erect new depots, stations, and other buildings, and connect the same with the said railroad, and to acquire and hold lands for the said and other needful purposes; and the said corporation shall also possess all the faculties, powers, authorities, immunities, privileges, and franchises, at any time held by the said Pittsburgh, Fort Wayne and Chicago Railroad Company, or by any of the corporations heretofore consolidated into the said Company, or conferred on the said company, or the said corporations, or either of them, by any act or law of this Commonwealth, or of the States of Ohio, Indiana, or Illinois, and shall have power and capacity to hold and exercise within each and every of the said States, all the said faculties, powers, authorities, privileges, and franchises, and all others which may hereafter be conferred upon it by or under any law of this Commonwealth; and to hold meetings of stockholders and directors, and do all corporate acts and all things within any of the aforesaid States, as valid-

ly as it might do the same within this Commonwealth; and the
75 said corporation formed pursuant to this act shall also have power to create and issue capital stock in shares of one hundred dollars each and to such aggregate amount as it shall deem necessary to carry out the objects of this act, and may establish preferences in respect to dividends in favor of one or more classes of the said stock in such order and manner and to such extent as it may deem expedient, and may confer on holders of any bonds which it may issue or assume to pay, such rights to vote at all meetings of stockholders not exceeding one vote for every one hundred dollars of the par amount of said bonds as may by it be deemed advisable; which rights, when once fixed, shall attach to and pass with such bonds under such regulations as the by-laws may prescribe to the successive holders thereof, but shall not subject any holder to any assessment by the said company, or to any liability for its debts, or entitle any holder to dividends; and the said corporation may make and issue its bonds of not less denomination than one hundred dollars each, payable at such times and places and bearing such rates of interest as it may deem expedient, and may hypothecate or sell such bonds within or without this Commonwealth at such prices as it may deem proper: *Provided, nevertheless,* That, except within six months after the organization of the said company no bonds shall be created, nor shall any debt be contracted exceeding in the aggregate at any one time five per cent. on the par amount as the capital stock of said company, unless the same shall have been previously authorized by a vote of two-thirds in interest of the stock and bondholders, at a meeting duly held; and the said corporation may secure the payment of any bonds which it may make, issue, or assume to pay, by a mortgage or mortgages, or deed or deeds of trust, of its railroad, or of any part or parts thereof, or any of its real estate, and may include in any such mortgage or mortgages, or deed or deeds of trust, any locomotives, cars, and other rolling stock or equipments, and all machinery, whether then held or thereafter to be acquired, for the constructing, operating, repairing, or replacing of the said railroad, or any part thereof, or any of its equipments or appurtenances, all of which property and things so included, and all fixtures or appurtenances, whether then possessed or thereafter to be acquired, shall be subject to the lien and operation of every such mortgage or deed of trust, and may also include all franchises held by the said corporation and connected with or relating to the said railroad, and all corporate franchises of the said company, which said franchises are hereby declared in case of sale by virtue of any such mortgage or mortgages, or deed or deeds of trust, to pass to the purchasers so as to enable them to form a corporation in the manner herein prescribed,
76 and to vest in such corporation all the faculties, powers, authorities, immunities, privileges, and franchises conferred by this act; and the said corporation may do all things which may be necessary or convenient to carry into full effect the powers hereby granted, and the powers hereby conferred may be exercised by the directors thereof.

SECTION 3. That the said corporation, formed pursuant to this act, shall, within six months after its organization, likewise have power to assume such debts, liabilities, and claims against the said Pittsburgh, Fort Wayne and Chicago Railroad Company, and make such settlements or adjustments with any of the stockholders, or other parties interested therein, as it may deem proper, and for the said purposes to use such portion of the stock or bonds hereby authorized to be created, and in such manner as it may deem necessary.

SECTION 4. That full authority is hereby given to the corporate au-

thorities of the several county, township, city, village, or other municipal corporations, owning or holders of stock in the said company, and to all persons holding the same in any fiduciary capacity, to accept and receive under the reorganization, such portion of the new stock as may be apportioned to the stock so owned and held.

JOHN M. THOMPSON,
Speaker of the House of Representatives, pro tem.
WM M. FRANCIS,
Speaker of the Senate.

Approved the thirty-first day of March, anno Domini one thousand eight hundred and sixty.

WM F. PACKER.

OFFICE OF THE SECRETARY OF THE COMMONWEALTH,
Harrisburg, April 2, 1860.

PENNSYLVANIA, *ss:*

I do hereby certify that the foregoing annexed is a full, true, and correct copy of the original act of the general assembly, as the same remains on file in this office.

In testimony whereof I have hereunto set my hand and caused the seal of the secretary's office to be affixed, in the day and year above-written.

[SEAL.]

H. L. DIFFENBACH,
Deputy Secretary of the Commonwealth.

Also, an act of the general assembly of the State of Indiana, approved March 5, 1861, as follows:

77 AN ACT to legalize, authorize, and regulate the sale of and to perfect the title of purchasers of railroads heretofore sold, or hereafter to be sold, by foreclosure, or other proceedings, in law or equity, or to enable them to organize corporations, and to exercise corporate and other powers, to provide for the payment of stock injured by such corporations, and to provide for the payment of ticket and freight balances.

SECTION 1. *Be it enacted by the general assembly of the State of Indiana*, That in case a majority in interest of the creditors of a railroad company, and the majority in interest of the stockholders of such company shall agree upon a plan for the readjustment or capitalization of the debt and stock thereof, thereupon an agreement, as aforesaid, either before or after a sale of said railroad under judicial proceedings, and a purchase at such sale by trustees, on behalf of the parties to such agreement, all the franchises and powers, including the franchises to act as a corporation, conferred by the charter of such railroad company, shall pass by such sale, and vest in the said trustees, together with the railroad, and all the other property embraced in the sale; and in case any railroad situate wholly or partly within this State, or any part thereof situate within this State, shall, in pursuance of such agreement, be sold by virtue of any mortgage or mortgages, or deed or deeds of trust, either by foreclosure or other proceeding in law or equity, or pursuant to any power in such mortgage or mortgages, or deed or deeds of trust contained, or by the joint exercise of those authorities, as hereafter provided, the purchaser or purchasers of the same, or their survivor or survivors, or they, or their, or he and his associates, may form a corporation, by filing in the office of the secretary of state, a certificate under his or their signature, specifying the name of such corporation, the number of directors, the names of the first directors, and the period of their

service, not exceeding one year, the amount of the original capital, and the number of shares into which such capital is to be divided; and the persons signing said certificate, and their successors, shall be a body politic and corporate by the name therein specified; and a copy of such certificate, attested by the signature of the secretary of state, or his deputy, shall, in all courts and places, be evidence of the due organization and existence of the said corporation, and of the facts in the said certificate stated: *Provided*, That no sale under the provisions of this act shall be valid, unless notice thereof stating time and place of
78 sale, shall have been published in some newspaper of general circulation in the city of New York, and also by publishing said notice in at least one newspaper of general circulation, published in each county in this State, through which said railroad may run, not less than thirty nor more than sixty days, at the discretion of the court ordering said sale, immediately preceding said sale. And all sales of railroads, made under the order or decree of a court of record, are hereby legalized as fully as though the sale had been made in pursuance of this act: *Provided*, That nothing herein contained shall be construed to legalize the decree itself, or to correct any error therein, or to legalize the sale or conveyance of any real estate, by or to any railroad company, or to legalize any consolidation by any railroad companies in this State, but only to confine the sale of the road-bed, depot grounds, and such realty as is essential to the operations of the railroad, including also the rolling stock, machinery, and equipments upon the road, as embraced in the decree.

SECTION 2. Such corporations shall possess all the powers, rights, privileges, immunities, faculties, and franchises, in respect to the said railroad, or the part thereof purchased, as aforesaid, which were possessed or enjoyed by the corporation that owned or held the said railroad previous to such sale, by virtue of its charter or amendments thereto, or other laws of this State, or of any State, not inconsistent with the laws of this State, in which any part of the said railroad is situate; and shall also have power, by agreement of the persons forming the said corporation, as aforesaid, or by a vote of a majority in interest of the stockholders, at any time within six months after the formation of the said corporation, to assume any debts or liabilities of the corporation which owned or held the said railroad before the said sale; and in like manner, and within a like period, to make such adjustments with any stockholders of the said last-mentioned corporation, as it may deem expedient, and for the said purposes to use such portions of the bonds and stock it may be authorized to create, as it may deem necessary, and in such manner as it may deem proper; and shall also have power to make and issue bonds, payable at such times and places, and bearing such rates of interest as it may deem expedient, and to sell or dispose of such bonds at such prices and in such manner as it may deem proper; and to secure the payment of any bonds which it may make, issue, or assume to pay, by a mortgage or mortgages, or deed or deeds of trust of its railroad, or of any part thereof, or any other of its property, real or personal, and may include in such mortgage or mortgages, or deed or deeds of trust, any locomotives, cars, and other rolling stock and equipments, and any machinery, tools, implements, fuel, and ma-
78 terials, whether then held or thereafter to be acquired, for the constructing, operating, repairing or replacing the said railroad, or any part thereof, or any of its equipments or appurtenances, (all of which property so included, whether then held or thereafter to be acquired, shall be subject to the lien and operation of such mortgage or

mortgages, or deed or deeds of trust,) all franchises held by the said corporation, and connected with or relating to the said railroad, and all corporate franchises of the said company, (which said franchises, in case of sale, by virtue of any such mortgage or mortgages, or deed or deeds of trust, are hereby declared to pass to the purchasers, so as to enable them to form a corporation in the manner herein prescribed, and to vest in such corporations all the faculties, powers, authorities, immunities and franchises conferred by this act.) And the said corporation shall have power to establish sinking funds, for the redemption of any of its debts; and shall likewise have power to issue capital stock to such aggregate amount as it shall deem necessary, not exceeding any limitation which may be fixed by agreement with the persons forming the said company, in the manner hereinbefore provided, and may establish preferences in respect to dividends, in favor of one or more classes of the said stock, in such order and manner, and to such extent, with securities, as it may deem expedient; and may confer on holders of any bonds which it may issue or assume to pay, such rights to vote at all meetings of stockholders, not exceeding one vote for every one hundred dollars of the par amount of the said bonds, as may by it be deemed advisable; which rights, when once fixed shall attach to and pass with such bonds, under such regulations as the by-laws may prescribe, to the successive holders thereof, but shall not subject any holders to any assessment by the said company, or to any liability from its debts, or entitle any holder to dividends. And the said corporation shall also have capacity to hold, and enjoy, and exercise within other States, the aforesaid faculties, powers, rights, immunities, and franchises, and such others as may be conferred upon it by any law of the State, or of any other State in which any part of its railroad may be situate or in which it may do any part of its business, and to hold meetings of stockholders and directors, and do all corporate acts, and all things without this State, as validly as it may do the same within this State.

SECTION 3. In case the part situate within this State of any railroad, a part of which is situate in any State, shall become vested in a corporation of such other State, and such corporation shall also acquire a part situate in such other State, of the said railroad, the said corporation may exercise and enjoy within this State, for the purpose of the said 80 railroad, and its business, so far as it may be endowed by the laws of the State of its creation with capacity to do so, all the powers, rights, faculties, privileges, immunities, and franchises, enumerated in section second of this act, and its mortgages or trust deeds shall operate as therein specified.

SECTION 4. Next in order of the lien to the existing mortgage debt of the old road, shall stand the amounts due persons for labor performed, and wood and other such materials furnished the old company in running the road, and damages for killing stock and right of way: *Provided*, that all the property of said company shall be liable for damages recovered against said company for stock killed or injured by them, or exempt from mortgage liens.

SECTION 5. So much of any railroad, as lies in this State, and is embraced in the mortgage or mortgages sought to be foreclosed, may be sold at any such sale as an entirety, and the court making a decree or order of sale, may declare in the order where the principal office of the railroad company is situate within the State, and may order the sale to be made at the court-house door of the county in which the principal office within the State is situate.

SECTION 6. In case of the sale of a railroad, or any part thereof,

as in the first section of this act mentioned, full power is hereby given to the corporate authorities of the several counties, cities, townships, and other municipal corporations holding stock in the company by which such railroad was owned, and to all persons holding such stock in a fiduciary capacity, to surrender or assign such stock, and to accept and receive such new stock in any corporation, which after such sale, may become the owners of said railroad, or any part thereof, as may be apportioned or given in respect to the said first-mentioned stock, under any reorganization of the ownership of the said railroad.

SECTION 7. That no purchaser or purchasers of any railroad shall be entitled to any rights or benefits under this act, until such purchaser or purchasers shall first assume and pay in money, or first-class or satisfactory securities, to be issued by the new corporation, formed upon the sale or transfer of any railroad as herein provided for, as the creditor or creditors may elect, all ticket balances or back charges for freight, with interest, whether due upon account, judgment of a court of record, bond, note, or other instrument in writing, which the former railroad corporation may have owed or been in arrears for, to any connecting railroad company operating a railroad entirely or in part in this State.

SECTION 8. This act may be amended or repealed at the discretion of the legislature.

81 SECTION 9. It is hereby declared that an emergency exists for the immediate taking effect of this act; and, therefore, the same shall be in force from and after its passage.

JOHN R. CRAVENS,
President of the Senate.
CYRUS M. ALLEN,
Speaker of the House.

Approved and signed March 5th, 1861.

OLIVER P. MORTON,
Governor.

STATE OF INDIANA:
Office of the Secretary of State, to wit:

I hereby certify that the above is a correct and complete copy, as taken from the original enrollment now in file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the State, at the city of Indianapolis, this 6th day of March, 1861.

[SEAL.]

W. A. PEELLE,
Secretary of State.

Also, an act of the general assembly of the State of Illinois approved Feb'y 8, 1861, as follows:

82 AN ACT to perfect the title of the purchasers of the Pittsburgh, Fort Wayne and Chicago Railroad, and to enable them to form a corporation, and defining the powers and duties of such corporation.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the general assembly*, That in case the railroad of the Pittsburgh, Fort Wayne and Chicago Railroad Company, or any part thereof, shall be sold by virtue of any mortgage or mortgages, or deed or deeds of trust, either by foreclosure or other proceedings in law or equity, or in pursuance of a power in such mortgage or mortgages, or authorities, the purchaser or purchasers of the same, or their survivors or survivor,

or they, or their, or he and his associates, or their or his assigns may form a corporation by filing in the office of the secretary of state, under their or his signature, specifying the name of such corporation, the number of directors, the names of the first directors, the period of their services, not exceeding one year, the amount of the original capital, and the number of shares into which such capital is to be divided; and thereupon the persons who shall have signed such certificate and their successors shall be a body politic and corporate by the name stated in such certificate, and a copy of such certificate, attested by the signature of the secretary of state, or his deputy, shall, in all courts and places, be evidence of the due formation and existence of the said corporation and of the facts in the certificate stated.

83 SECTION 2. The said corporation, formed pursuant to this act, shall have power to acquire by purchase or otherwise, and to hold, use, and enjoy the Pittsburgh, Fort Wayne and Chicago Railroad, and each and every part thereof, whether situate within or without this State, and all equipments, machinery, tools, and materials, all lands, property, franchises, rights, and things connected therewith, or necessary, or convenient to the use thereof, together with the tolls, income, rents, issues, and profits of the same, and shall have power to maintain and operate the same, as fully as might have been done by the Pittsburgh, Fort Wayne and Chicago Railroad Company, and to erect new depots, stations, and other buildings, and connect the same with the said railroad, and to acquire and hold lands for the said and other needful purposes; and the said corporation shall also possess all the faculties, powers, authorities, immunities, privileges, and franchises at any time held by the said Pittsburgh, Fort Wayne and Chicago Railroad Company, or by any of the corporations heretofore consolidated into the said company, or conferred on the said company, the said corporations, or either of them, by any act or law of this State, or of either of the States of Ohio, Indiana, or Pennsylvania, and shall have power and capacity to hold and exercise within each and every of the said States, and, so far as it may deem necessary to the general objects of its business, within any other of the United States, all the said faculties, powers, authorities, privileges, and franchises, and all others which may hereafter be conferred upon it by or under any law of this State, or of any of the aforesaid States, and to hold meetings of stockholders and directors, and do all corporate acts and all things within any of the aforesaid States, as validly as it might do the same within this State, and may consolidate with any corporations of such other States authorized to hold, maintain, and operate the aforesaid railroad; and the said corporation, formed pursuant to this act, shall also have power to create and issue capital stock in shares of one hundred dollars each, and to such aggregate amount as it shall deem necessary to carry out the objects of this act; and may establish preferences, in respect to dividends, in favor of one or more classes of the said stock in such order and manner, and to such extent, and with such securities, as it may deem expedient, and may confer on holders of any bonds which it may issue or assume to pay such rights to vote at all meetings of stockholders, not exceeding one vote for every one hundred dollars of the par amount of the said bonds, as may by it be deemed advisable; which rights, when once fixed, shall attach to and pass with such bonds, under such regulations as the by-laws may prescribe, to the successive holders thereof, but shall not subject

84 any holder to assessment by the said company, or to any liability for its debts, or entitle any holder to dividends; and the said corporation may make and issue its bonds, of not less denomination than

one hundred dollars each, payable at such times and places, and bearing such rates of interest, as it may deem expedient, and may hypothecate or sell such bonds, within or without this State, at such prices as it may deem proper: *Provided, nevertheless,* That, except within six months after the organization of said company, no bond shall be created, nor shall any debt be contracted, exceeding in the aggregate at any one time five per cent. on the par amount of the capital stock of the said company, unless the same shall have been previously authorized by a vote of two-thirds in interest of the stock and bondholders, at a meeting duly held; and the said corporation may secure the payments of any bonds which it may make, issue, or assume to pay, by a mortgage or mortgages, or deed or deeds of trust, of its railroad, or any part or parts thereof, or of any other of its property, real or personal, and may include in any such mortgage or mortgages, or deed or deeds of trust, any locomotives, cars, and other rolling stock or equipments, and any machinery, tools, implements, fuel, and materials, or other real or personal estate, whether then held, or thereafter to be acquired, for the constructing, operating, repairing, or replacing of the said railroad or any part thereof, or of any of its equipments or appurtenances; all of which property and things so included, whether then possessed, or thereafter to be acquired, shall be subject to the lien and operation of every such mortgage or deed of trust, in the same manner, and with the like effect, as if such property and things constituted a part of the said railroad; and may also include all franchises held by the said corporation, and connected with or relating to the said railroad, and all corporate franchises, which are hereby declared, in case of sale by virtue of any such mortgage or mortgages, or deed or deeds of trust, to pass to the purchaser or purchasers, so as to enable him or them to form a corporation, in the manner herein described; and to vest in such corporation all the faculties, powers, authorities, immunities, privileges, and franchises conferred by this act. And the said corporation may do all things which may be necessary or convenient to carry into full effect the powers hereby granted; and the powers hereby conferred may be exercised by the directors thereof.

SECTION 3. That the said corporation, formed pursuant to this act, shall, within six months after its organization, likewise have power to assume such debts, liabilities, and claims against the said Pittsburgh, Fort Wayne and Chicago Railroad Company, and make such settlements or adjustments with any of the stockholders, or other parties interested therein, as it may deem proper; and for the said purposes to use such portion of the stock or bonds hereby authorized to be created, and in such manner as it may deem necessary.

SECTION 4. That in case the said Pittsburgh, Fort Wayne and Chicago Railroad, or any part thereof, shall be decreed by any court having jurisdiction in any State, or part of a State composing a judicial district, within which a part of said railroad is situated, to be sold by virtue of any mortgage or mortgages, or deed or deeds of trust upon the same, containing a power of sale to the trustee or trustees, it shall be lawful for the said trustee or trustees to unite with the proper officer in making such sale, or under the order of the court to make such sale at the time and place appointed by the court, and with such notices as may be ordered by the court, and to execute a conveyance of the said railroad, or the part thereof which may be so sold; and such sale and conveyance shall be a valid and effectual execution of the powers of sale and conveyance contained in the said mortgage or mortgages, or deed or deeds of trust, and shall operate to invest the purchasers with

the title to the railroad property, and things sold as aforesaid, free and discharged from all rights and equity of redemption by the mortgagor or junior incumbrancer, or other party whatsoever.

SECTION 5. That full authority is hereby given to the corporate authorities of the several counties, townships, cities, villages, or other municipal corporations owning or holding stock in the said company, and to all persons holding the same in any fiduciary capacity, to transfer, assign, or surrender the same, and to accept and receive, under the reorganization, such portion of the new stock as may be apportioned to the stock so owned and held.

SECTION 6. That this act shall be a public act, and shall take effect from and after its passage.

S. M. CULLOM,
Speaker of the House of Representatives.
FRANCIS A. HOFFMAN,
Speaker of the Senate.

Approved February eighth, eighteen hundred and sixty-one.
RICHARD YATES,
Governor.

UNITED STATES OF AMERICA,
State of Illinois, ss :

I, O. M. Hatch, secretary of state of the State of Illinois, do hereby certify that the foregoing is a true copy of an enrolled law now on file in my office.

In witness whereof I have hereunto set my hand and affixed the great seal of State, at the city of Springfield, this 14th day of February, A. D. 1861.

[SEAL.]

O. M. HATCH,
Secretary of State.

86 Also, an act of the general assembly of the State of Ohio, passed April 11, 1861, as follows:

A LAW to regulate the sale of railroads, and the reorganization of the same.

SECTION 1. *Be it enacted by the general assembly of the State of Ohio*, That in case two-thirds in interest of the creditors of a railroad company, and two-thirds in interest of the stockholders of such company shall agree, in writing, upon a plan for the readjustment or capitalization of the debt and stock thereof, then, upon judicial proceedings for the sale of the road under a mortgage or mortgages, or a deed or deeds of trust, the court before which such proceedings may be had shall proceed to render a judgment or decree against the company for the amount that may then be due and in arrear upon said securities, which judgment or decree shall, from its rendition, become a lien on all the property embraced in such securities, and upon all the franchises and powers of said company, including its franchise to be and act as a corporation, conferred by the charter and the amendments to the charter of such company; and upon a sale had under such decree, and a purchase at such a sale by trustees on behalf of the parties to such agreement, appointed by said agreement, all the said property so bound by the judgment or decree, including all the said franchises, shall vest in said trustees: *Provided*, That every such agreement shall provide that the unsecured debts of the company, incurred for repairs or running

expenses, shall be paid in money, or bonds of the reorganized company as hereinafter provided; said bonds to be of the highest class issued. A copy of the terms of said agreement shall be filed in said court before the rendition of said decree.

SECTION 2. That the said trustees shall, as soon as may be after the sale, call a meeting of the parties to the aforesaid agreement, by a notice signed by a majority of said trustees, or of their survivors, and published not less than once a week, for four weeks, in a newspaper printed in the cities of New York and Philadelphia, and in another newspaper printed in each county on the line of the said railroad, specifying the day and place and object of such meeting; the place of such meeting to be on the line of said road; that at such meeting each of the parties to the aforesaid agreement shall be entitled to vote according to the provisions thereof, but not exceeding one vote for every fifty dollars of the par value of the debt or stock of such party, according to a list of voters and of their respective interests, which shall be prepared by the said majority of the trustees, who are empowered to act as judges of the election; that such meeting, by a majority in interest of the persons present, in person or by proxy, shall be competent to retain or
87 change the name of said corporation; to decide, for the time being, the amount of its capital and the number of shares into which such capital shall be divided; to fix the number of directors and their term of office; to elect such directors, a majority of whom shall be residents of the State or States in which such railroad is situated; and to do all things necessary or proper to reorganize said corporation: *Provided*, That any creditor shall be entitled to become a party to the agreement aforesaid, either at or at any time before the meeting in this section provided for; and that any stockholder shall be entitled to become a party to the agreement aforesaid at any time within one year after such meeting.

SECTION 3. That a certificate, under the common seal of such corporation, specifying its name and the railroad which it is to hold, maintain, and operate, shall be filed in the office of the secretary of state; and that a copy of such certificate, duly authenticated by him under the great seal of this State, shall, in all courts and places, be evidence of a compliance with all the conditions and provisions of this act, and of the due reorganization and of the existence of the said corporation.

SECTION 4. Upon such reorganization and a conveyance by the trustees, or of such of them as shall be vested with the legal title, or their survivors, all the railroad and other property and franchises and things purchased as aforesaid, and all the franchises, powers, faculties, privileges, and immunities which were possessed or enjoyed by the original company, or by any company with which it had been consolidated, shall pass to and be vested in the said corporation as reorganized; and the same, and all property and things which the said reorganized corporation shall thereafter acquire, except as hereinafter provided, shall be taken, held, and disposed of for the use and benefit of the creditors and stockholders of the said corporation, who shall have become such upon and after such reorganization, according to their respective rights, but subject to the powers of the said corporation; and shall be in no wise chargeable in respect to any debt, liability, or claim of any creditor or stockholder, which subsisted prior to the sale and reorganization herein provided for; but all property of the original corporation not embraced in the said sale, shall, upon the reorganization, be vested in the said corporation as reorganized, in trust for all parties interested therein as creditors, stockholders, or otherwise.

SECTION 5. The said corporation shall likewise have power, at any time within six months after the reorganization, to assume such debts or liablities of the original company, and to make such adjustments or exchanges with any bondholders of the original company, and any stockholder, within one year, as to the said corporation may seem
88 expedient, and may use for such purpose any bonds or stock which it may be authorized to issue or create, and it shall have power to make and issue said bonds, payable at such times and places, and bearing such rates of interest as it may deem expedient, not exceeding seven per cent. per annum; and to secure the payment of any bonds which it may issue or assume to pay, by mortgages or deeds of trust of its railroad or any other of its property, real or personal, and to include therein, with its road, all its cars and other rolling-stock and equipments, and any machinery, tools, implements, fuel, materials, and all other things then held or thereafter to be acquired for the constructing, operating, or repairing said road, or for repairing or replacing any of its equipments or appurtenances, as part and parcel of said railroad, and as constituting with said road one property; and to include in such mortgages or deeds of trust all franchises held by said corporation and connected with or relating to said road, and all other corporate franchises of said company, all which said franchises, including the franchise of being a corporation, in case of sale by virtue of any such mortgage or deed of trust or any judgment specified in section six, are hereby declared to pass to the purchasers, so as to enable them to reorganize the corporation in the manner herein provided; and shall also have power to issue capital stock to such aggregate amount as it may deem proper, not exceeding any limit which may be fixed by agreement with the trustees purchasing as aforesaid; and may establish preferences, in respect to dividends, in favor of one or more classes of the said stock, in such order and manner as it may deem expedient, not exceeding such limit as may be fixed by agreement as aforesaid; and may, if authorized by the agreement mentioned in section one, confer on holders of any bonds which it may issue or assume to pay, such rights to vote at all meetings of stockholders, not exceeding one vote for every fifty dollars of the par amount of the said bonds, as may have been provided for in the agreement mentioned in section one, which rights, when once fixed, shall attach to and pass with such bonds, under such regulations as the by-laws may prescribe, to the successive holders thereof, but shall not subject any holder to any assessment by the said company, or to any liability for its debts, or entitle any holder to dividends.

SECTION 6. The lien of the mortgages and deeds of trust authorized to be made by this act shall be postponed to the lien of judgments recovered against said corporation after its reorganization, for labor thereafter performed for it, or for materials or supplies thereafter furnished to it, or for damages for losses or injuries thereafter suffered or sustained by the misconduct of its agents, or in any action founded on its contracts or liability as a common carrier, thereafter made or incurred.

89 SECTION 7. The provisions of this act shall extend and apply also to corporations whose railroads are partly within and partly without this State; and a corporation of this State, possessing such a railroad, shall have capacity to exercise without this State all its powers, privileges, faculties, and franchises; and a corporation of another State, possessing part of a railroad which is partly in such other State, and partly within this State, may exercise and enjoy within this State all its powers, privileges, faculties, and franchises, for the purpose of

the said railroad and its business, not inconsistent with the laws of this State and the provisions of this act; and all mortgages and deeds of trust, made by the said corporation upon its railroad equipments or other property within this State, shall operate in the same manner and with the like effects as is hereinbefore provided with respect to those corporations reorganized under this act: *Provided*, That such part of the said railroad as is within this State shall be subject to taxation, and shall be subject to all regulation of law in the same manner as railroads of this State in like cases, and the corporation owning the same shall be subject to all duties in respect thereto imposed by law, and to be sued and may sue in all cases, and in the same manner as a corporation of this State might be sued or might sue.

SECTION 8. Railroads and other property mortgaged therewith by said railroad companies, may, if the court deem it expedient, be sold without appraisement at judicial sales, under judgments upon such mortgage; but in such case, in order to prevent sacrifices and protect the interests of all concerned, the court shall fix a minimum sum, below which no such sale shall be made; and, in order to fix that amount, the court may, if it deem expedient to do so, refer the subject to a master, with instructions to take testimony and report upon the same.

SECTION 9. That in regard to bonds or stock held by the State of Ohio, counties, townships, cities, villages, or other municipal corporations, or otherwise held in a fiduciary capacity, the governor, county commissioners, trustees, council, or other corporate body representing the State, municipal corporation, or persons holding in a fiduciary capacity, as executors, administrators, guardians, or otherwise, shall be, and they are hereby, authorized to become parties to such agreement, and to control, exchange, or manage said bond or stock according to the terms of the agreement, and to take and receive new bonds or stock to be issued in lieu of the original bonds or stock, which shall be held on the same terms and subject to all liens which attached to said original bonds or stock.

SECTION 10. That any association or company of persons which has heretofore come into the possession of the road and other property of any railroad company within this State, by purchase under judicial proceedings, and in pursuance of any agreement for the capitalization of the debts and stock of such railroad company, (to which a majority in interest of the creditors and of the stockholders of such railroad company were parties,) and which may now be reorganized under any law of this State, may accept of the provisions of this act, by a vote of a majority interest of its stockholders under such reorganization, at any meeting convened upon notice for that purpose; and, upon such acceptance, may reorganize, as provided in this act; and such reorganized company shall be invested with all the powers, privileges and immunities conferred, and subject to all the restrictions imposed by this act, to the same extent as if such reorganization had been originally under this act; and a copy of the resolution of acceptance, as aforesaid, attested by the signature of the president and the seal of the corporation, shall be filed in the office of the secretary of state, and a copy thereof, duly authenticated by him under the great seal of this State, shall be due evidence of such acceptance; and all stockholders and creditors who have not participated in the agreement for capitalization, heretofore made, still have the right to participate in the benefits of such agreement, at or before the meeting which shall be convened upon notice for the purpose of accepting the provisions of this act, as provided in this section, in the same manner and to the same extent as

if they had participated in and accepted of the terms of such agreement for capitalization, in the manner provided by any law under which such capitalization has heretofore taken place.

SECTION 11. This act shall take effect from and after its passage.

ED. A. PARROT,
Speaker pro tem. of the House of Representatives.
ROB'T C. KIRK,
President of the Senate.

Passed April 11th, 1861.

SECRETARY OF STATE'S OFFICE,
Columbus, Ohio, April 16th, 1861.

I, Addison P. Russell, secretary of state of the State of Ohio, do hereby certify the foregoing to be a correct copy of the original roll, now on file in this office.

In testimony whereof I do hereunto subscribe my name and affix the great seal of the State of Ohio at Columbus, on the day and year of the date hereof.

[SEAL.]

A. P. RUSSELL,
Secretary of State.

91 Deed of individuals to the Pittsburg, Fort Wayne and Chicago Railway Company, dated March 2, 1862, offered as follows:

This indenture, this second day of March, in the year of our Lord one thousand eight hundred and sixty-two, between James F. D. Lanier and Mary M. Lanier, his wife, Samuel J. Tilden, bachelor, and Louis H. Meyer and Ann Charlotte Meyer, his wife, of the city and State of New York; J. Edgar Thomson and Lavinia F. Thomson, his wife, of the city of Philadelphia, and State of Pennsylvania; and Samuel Hanna and Eliza Hanna, his wife, of the town of Fort Wayne, and State of Indiana, of the first part, and The Pittsburgh, Fort Wayne and Chicago Railway Company, of the second part, witnesseth:

Whereas the said Pittsburgh, Fort Wayne and Chicago Railway Company, party of the second part, is vested with franchises to be a corporation, granted to the said company by the States of Pennsylvania, Illinois, and Indiana, respectively, and has become duly organized as a corporation in conformity to the provisions of the said grants, with capacity, in its corporate character, to take, hold, and exercise other franchises, and particularly with capacity to acquire, hold, maintain, and operate the continuous railway extending from Pittsburgh, in the State of Pennsylvania, to Chicago, in the State of Illinois, commonly known as The Pittsburgh, Fort Wayne and Chicago Railroad, together with its equipments and appurtenances:

And whereas, the said company has agreed with the parties of the first part, to buy the aforesaid railway, and in evidence of a portion of the consideration of the same, has made and delivered to the parties of the first part its bonds, bearing date on the first day of March, in the year one thousand eight hundred and sixty-two, and payable at the office or agency of the said company, in the city of New York, of which bonds six thousand and six hundred, secured by a first lien, created by a deed of trust or mortgage hereinafter mentioned, amount in the aggregate to the sum $5,250,000, are payable on the first day of July, in the year one thousand nine hundred and twelve, and are redeemable, at the option of the company, any time after the first day of July, one thousand eight hundred and sixty-seven, on any day in which a half-yearly instalment of interest shall fall due, and are convertible at the option

of the holder thereof, upon any such day, into bonds, to be issued:

92 And whereas, the parties of the first part to these presents, for the consideration of the said several deeds of trust or mortgage expressed, and in order to secure the payment of the principal and interest of the bonds aforesaid, issued or to be issued, as in said several deeds of trust or mortgage recited and provided, and every part of the said principal and interest, as the same shall become payable according to the tenor of said bonds, and of the coupons thereto annexed, have made and delivered to John Ferguson and Samuel J. Tilden, of the city of New York, trustees, three several deeds of trust or mortgage,* known respectively, as the first, second, and third mortgages, bearing date, respectively, on the first day of March, in the year one thousand eight hundred and sixty-two, and conveying to the said trustees in the manner and for the purposes, and upon the trusts therein specified, all and singular, the railway, and the premises, franchises, property, and things therein and hereinafter specified, mentioned, and described:

Now, this indenture witnesseth: That the parties of the first part, in consideration of the premises, and of one dollar to each of them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and do by these presents, grant, bargain, sell, convey, and transfer unto the said party of the second part, all the right, title, and interest in them, the parties of the first part, and of any or either of the said parties, acquired by virtue of a deed, bearing date the eighteenth day of February, 1862, and made to the said James F. D. Lanier, Samuel J. Tilden, Louis H. Meyer, J. Edgar Thomson, and Samuel Hanna, parties hereto of the first part, by John Ferguson and Thomas E. Walker, both of the city and State of New York, trustees and special master commissioners, in pursuance of decrees of the circuit courts of the United States, for the northern district of Ohio, the western district of Pennsylvania, the district of Indiana, and the northern district of Illinois, in causes in chancery in the said courts then depending, wherein Charles Moran and others were complainants, and The Pittsburgh, Fort Wayne and Chicago Railroad Company and others were defendants, or acquired by virtue of a deed bearing date the twenty-sixth day of February, 1862, made to the said James F. D. Lanier, Samuel J. Tilden, Louis H. Meyer, J. Edgar Thomson, and Samuel Hanna, parties hereto of the first part, by The Pittsburgh, Fort Wayne and Chicago Railroad Company, pursuant to the aforesaid decrees, of, in, and to all and singular, the continuous railway extending from its eastern terminus in Pittsburgh, in the State of Pennsylvania, to Chicago, in the State of Illinois, and commonly known as The Pittsburgh,

93 Fort Wayne and Chicago Railroad or Railway, including all the railways, ways and rights of way, depot grounds and other lands; all tracks, bridges, viaducts, culverts, fences, and other structures; all depots, station-houses, engine-houses, freight-houses, wood-houses and other buildings; and all machine shops and other shops, held or acquired for use, in connection with the said railway, or the business thereof; and including also, all locomotives, tenders, cars, and other rolling stock or equipments; and all machinery, tools, implements, fuel, and materials for the constructing, operating, repairing, or replacing the said railway, or any part thereof, or any of its equipments, or appurtenances; and also, all franchises connected with or relating to the said railway, or the construction, maintenance or use thereof; and all the property, franchises, rights, and things of whatever

* See appendix for the three several deed of trust.

name or nature, which were conveyed by the aforesaid deeds of the said trustees and master commissioners, and of the said company, to the parties of the first part hereto; subject, nevertheless, to the aforesaid certain deed of trust or mortgage, bearing date on the first day of March, 1862, made by the said James F. D. Lanier, Samuel J. Tilden, Louis H. Meyer, J. Edgar Thomson, and Samuel Hanna, parties of the first part, to the said John Ferguson and Samuel J. Tilden, trustees, creating a first lien upon the property therein and herein mentioned, for the purpose of securing the payment of bonds of the said company known as first-mortgage bonds, amounting in the aggregate, to five millions and two hundred and fifty thousand dollars; and subject, also, to the aforesaid certain other deed of trust or mortgage, bearing date on the said first day of March, 1862, made by the said James F. D. Lanier, Samuel J. Tilden, Louis H. Meyer, J. Edgar Thomson and Samuel Hanna, parties of the first part, to the said trustees, creating a second lien upon the aforesaid property, for the purpose of securing the payment of bonds of the said company, known as second mortgage bonds, amounting, in the aggregate, to five millions and one hundred and sixty thousand dollars; and subject, also, to the aforesaid certain deed of trust or mortgage, bearing date on the said first day of March, 1862, made by the said James F. D. Lanier, Samuel J. Tilden, Louis H. Meyer, J. Edgar Thomson, and Samuel Hanna, parties of the first part, to the said trustees, creating a third lien upon the aforesaid property, for the purpose of securing the payment of bonds of the said company, known as third-mortgage bonds, amounting, in the aggregate, to two millions of dollars; and subject, also, as to so much of the said railroad, lying between the Federal street station, in Allegheny City, in the State of Pennsylvania, and the passenger depot of the Penn-
94 sylvania Railroad, on Liberty street, in Pittsburgh, in said State, and of the other property connected therewith, as is embraced within a certain mortgage, made by the Ohio and Pennsylvania Railroad Company to Thomas F. Firth, of the city of Philadelphia, and Reuben Miller, jr, of the city of Pittsburgh, bearing date May 6th, 1856, to the lien created by the said mortgage; and subject also, as to the rights of way, depot grounds, lots and premises, in the city and vicinity of Chicago, purchased during the pendency of the said suit, in which Charles Moran and others are complainants, and the said Pittsburgh, Fort Wayne and Chicago Railroad Company, and others, are defendants, as aforesaid, by the agency of the receiver in the said causes, to the lien of the vendors for the purchase-money of the same; and subject also, as to any real estate included in the aforesaid sale by the said trustees and master commissioners, to the lien, if any such exists, of any vendor or former owner of said real estate, not otherwise provided to be paid by the decrees or orders in the said causes:

Provided, nevertheless, and it is the true intent and meaning of these presents, that nothing herein contained shall be construed to express or imply any covenant by the parties of the first part, or either of them, but that this instrument shall operate to convey, in behalf of the said parties, all the estates and interests in the railway and appurtenances, property, rights, franchises and things hereinbefore described, which the said parties, or either of them, might hold by virtue of the aforesaid conveyances, and which the said parties, each for himself or herself, and not one for the other, can lawfully convey, and no more; and that the said estates and interests are hereby charged with and shall pass by virtue of these presents, subject to the payment of all liabilities incurred, in respect to the said railway or its business, by the said par-

ties of the first part, during their possession of the said railway: Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversions, remainders, tolls, incomes, rents, issues and profits thereof; and also, all the estate, right, title, interest, dower and right of dower, property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, or of either of them, of, in, and to the same, and any and every part thereof, with the appurtenances: To have and to hold the above-described premises, subject as aforesaid, unto the said party of the second part, and its successors and assigns, to the only proper use and behoof of the said party of the second part, and its successors and assigns, forever.

And the said party of the second part, for itself and its succes-
95 sors, in consideration of the premises, and of one dollar to it in hand paid by the said parties of the first part to these presents, the receipt whereof is hereby acknowledged, hereby covenants and agrees to and with the said James F. D. Lanier, Samuel J. Tilden, Louis H. Meyer, J. Edgar Thomson, and Samuel Hanna, parties of the first part to these presents, and the survivors and survivor of them, and the executors, administrators, and assigns of such survivor, that it, the said party of the second part, and its successors, shall and will at all times hereafter, perform and keep all and every the conditions, covenants, agreements, and provisions contained in said several deeds of trust or mortgage, or either of them, hereinbefore mentioned, to be by the said party of the second part performed or kept.

And the said party of the second part, for itself and its successors, in consideration of the premises, and of one dollar to it in hand paid by the said parties of the first part, the receipt whereof is hereby acknowledged, further covenants and agrees to and with the said James F. D. Lanier, Samuel J. Tilden, Louis H. Meyer, J. Edgar Thomson, and Samuel Hanna, parties of the first part, and the survivors and survivor of them, and the executors, administrators, and assigns of such survivor, that whenever and as often as the said party of the second part, or its successors, shall hereafter acquire any lands, or any equipment, or any other property or things of whatever name or nature, for use in connection with the railway hereinbefore mentioned, or any part thereof, or of any of its equipments or appurtenances, or shall acquire any franchises, including every franchise to be a corporation, which may be hereafter granted to the said company, the said party of the second part, and its successors, shall and will acquire, possess, and hold the same, and each and every thereof, and will likewise hold the franchises to be a corporation, heretofore granted to the said company, upon the trusts of the three several deeds of trust or mortgage hereinbefore mentioned, until conveyances thereof, in pursuance of the covenant next hereinafter contained, shall be duly made and delivered to the trustees of the said several deeds of trust or mortgage, respectively.

And the said party of the second part, for itself and its successors, in consideration of the premises, and of one dollar to it in hand paid by the said parties of the first part, the receipt whereof is hereby acknowledged, hereby further covenants and agrees to and with the said James F. D. Lanier, Samuel J. Tilden, Louis H. Meyer, J. Edgar Thomson, and Samuel Hanna, parties of the first part, and the survivors and sur-
96 vivor of them, and the executors, administrators, and assigns of such survivor, that the said party of the second part, and its successors, shall and will from time to time, and at all times hereafter, and as often as thereunto requested by the trustees, or by the surviving or con-

tinuing trustee, or their or his successors or successor, of either of the said several deeds of trust or mortgage, respectively, hereinbefore mentioned, execute, deliver, and acknowledge all such further deeds, conveyances and assurances* in the law for the better assuring unto the said trustee, or to the surviving or continuing trustee, or their or his successors or successor, in the trust created by the deeds of trust upon the trusts therein expressed, the railway equipment and appurtenance hereinbefore mentioned, or intended so to be, and all other property and things whatsoever, which may be hereafter acquired for use, in connection with the same, or any part thereof, and all franchises now held or hereafter acquired, including the franchise to be a corporation, as by the said trustees, or by the surviving or continuing trustee, or their or his successors or successor, or by their or his counsel learned in the law, shall be reasonably advised, desired, and required.

And the said party of the second part, for itself and its successors, in consideration of the premises, and of one dollar to it in hand paid by the said parties of the first part, further covenants and agrees to and with the said James F. D. Lanier, Samuel J. Tilden, Louis H. Meyer, J. Edgar Thomson, and Samuel Hanna, parties of the first part, and the survivors and survivor of them, and the executors, administrators, and assigns of such survivor, that the said party of the second part, and its successors, shall and will at all times hereafter, keep open an office or agency in the city of New York, for the payment of interest and principal of the bonds of the Pittsburgh, Fort Wayne and Chicago Railway Company, as the same shall become payable, according to the tenor of the said bonds, or of the coupons thereto annexed, as recited and provided in the three several deeds of trust or mortgage, hereinbefore mentioned, for the redemption of the principal of the said bonds, as provided in said deeds of trust or mortgage, for the transfer of the capital stock of the said company, for the registration of the bonds and bondholders, and for such other business of the said company as in and by the said three several deeds of trust or mortgage, or either of them, is provided to be done in the said city of New York.

In witness whereof, the parties of the first part have hereunto set their hands and seals; and the party of the second part has caused its corporate seal to be affixed to these presents, and the same to be attested by the signatures of its president and secretary, to evidence the
97 acceptance of the said party of the second part of the foregoing conveyance, and its execution of its covenants and agreements therein contained.

JAMES F. D. LANIER. [L. S.]
MARY M. LANIER. [L. S.]
SAMUEL J. TILDEN. [L. S.]
LOUIS H. MEYER. [L. S.]
ANN CHARLOTTE MEYER. [L. S.]
J. EDGAR THOMSON. [L. S.]
LAVINIA F. THOMSON. [L. S.]
SAMUEL HANNA. [L. S.]
ELIZA HANNA. [L. S.]

{SEAL RAILWAY COMPANY.} G. W. CASS, *President.*
W. H. BARNES, *Secretary.*

Signed, sealed, and delivered in presence of—
JAMES P. SINNOTT and
JOHN L. DRUMMOND.

*See appendix for deed of further assurance.

The foregoing deed was duly acknowledged by the several parties of the first part on the 23d day of April, 1862, & by the party of the
98 second part on the 1st day of May, 1862.

Also, deed from the Pittsburg, Fort Wayne and Chicago Railway Company to trustees, dated Feb'y 25, 1862, as follows:

This indenture, made this twenty-fifth day of February, in the year of our Lord one thousand eight hundred and sixty-two, by and between The Pittsburgh, Fort Wayne and Chicago Railroad Company, of the first part, and James F. D. Lanier, Samuel J. Tilden, Louis H. Meyer, of the city and State of New York; John Edgar Thompson, of the city of Philadelphia, and State of Pennsylvania; and Samuel Hanna, of the town of Fort Wayne, and State of Indiana, of the second part, witnesseth:

Whereas, in a cause in chancery, depending in the circuit court of the United States for the northern district of Ohio, wherein Charles Moran and others are complainants, and the Ohio and Pennsylvania Railroad Company and others are defendants, the said court ordered and decreed that the special master commissioners and trustees, named in said order and decree, should sell, in the manner therein provided, the following described property and effects, to wit: The railroad of the Pittsburgh, Fort Wayne and Chicago Railroad Company, including the right of way therefor, the road thereof, the superstructure of all sorts thereon, its waters and other station-houses and shops, and the land and grounds connected therewith, and all tools and implements used, or provided to be used therein, and in constructing and repairing cars and machinery for said road, or the track and superstructures aforesaid; all turn-tables, all depots, and buildings, and fixtures, and structures of whatever name or nature, and the lands and grounds connected therewith, used, or provided to be used, in operating said road, and belonging thereto, and wherever situate; and all cars, engines, and rolling stock belonging to said company; and all supplies of timber, lumber, iron, fuel, and every other thing provided by said company, or by the several original companies which were consolidated into said Pittsburgh, Fort
99 Wayne and Chicago Railroad Company, to be used in operating said road, wherever situate, by the same title by which the same are holden by said company, or by said original companies, severally, together with all corporate franchises of said company, and of the said original companies, severally, including the right and franchise of said several companies to be and act as a corporation, to be sold as an entirety; and

Whereas the circuit court of the United States for the western district of Pennsylvania, the circuit court of the United States for the district of Indiana, and the circuit court of the United States for the northern district of Illinois, in causes pending in said courts respectively, which were and are auxiliary to said cause first above mentioned, adopted said order and decree above mentioned, as to so much of said premises as are situate in said districts respectively, and did order the same to be sold by the same persons, and at the same time and place, and in the same manner, as was provided by said decree first above mentioned, in respect of the whole of said premises; and

Whereas the said decrees, and each thereof, provided further that, upon full payment of the purchase-money, and compliance with the terms of their purchase by said purchasers, to be found by the further order of the court to be made in the premises, the said special master commissioners and trustees, in their several capacities, or the survivor of them, shall by deed, to be executed in such form as may be proper to convey real estate in the said several States of Pennsylvania, Ohio,

Indiana, and Illinois, convey the premises to be sold, to the purchasers, their heirs, successors, or assigns, and thereupon also the said Pittsburgh, Fort Wayne and Chicago Railroad Company shall, by like deed, convey and confirm said premises to said purchasers, their heirs, successors, or assigns; and

Whereas all said premises above described, under and pursuant to said decrees, and in conformity thereto, were, on the 24th day of October, A. D. 1861, sold by said trustees and special master commissioners, to the said James F. D. Lanier, Samuel J. Tilden, Louis H. Meyer, John Edgar Thomson, and Samuel Hanna; and

Whereas it has been found by the further order of said circuit court of the United States for the northern district of Ohio, made in said cause first above mentioned, that said purchasers have made full payment of the purchase-money of said premises, and in all things complied with the terms of the said purchase:

Now, in obedience to the requirement of said orders and decrees, and in consideration of the sum of one dollar paid by the said parties of the second part to the said party of the first part, the receipt whereof
100 is hereby acknowledged, the said Pittsburgh, Fort Wayne and Chicago Railroad Company, party of the first part as aforesaid, hath granted, bargained, and sold, and doth hereby grant, bargain, sell, convey, and confirm unto the said James F. D. Lanier, Samuel J. Tilden, Louis H. Meyer, John Edgar Thomson, and Samuel Hanna, and to their heirs and assigns, all and singular, the premises, property, and effects aforesaid, of every kind and description, and of every name and nature whatsoever, so sold as aforesaid, to the said parties of the second part as aforesaid: To have and to hold the same to the only and proper use, benefit, and behoof of them, the said parties of the second part, and to the survivors and survivor of them as joint tenants, and not as tenants in common, to the heirs and assignes of such survivor, forever.

In witness whereof the president of the said Pittsburgh, Fort Wayne and Chicago Railroad Company, party of the first part as aforesaid, pursuant to an order of said company for that purpose duly made and recorded on the 24th day of October, in the year of our Lord one thousand eight hundred and sixty-one, hath hereunto subscribed his name officially, and caused the corporate seal of said company to be hereunto affixed the day and year first above written.

{ SEAL RAILROAD COMPANY. }

G. W. CASS,
President Pittsburgh, Fort Wayne and Chicago Railroad Co.

W. H. BARNES, *Secretary.*

Signed, sealed, acknowledged, and delivered in presence of—
J. P. HENDERSON and
TH. D. MESSLER.

101 Also, mortgage trust deed, executed by the trustees to other trustees, dated March 1, 1862, recites first-mortgage bonds which it is given to secure, a trust deed, as follows:

(J. M. Hutchinson, j'r, No. 1.)

(B.)

First-mortgage trust deed.

This indenture, made this first day of March, in the year of our Lord

one thousand eight hundred and sixty-two, between James F. D. Lanier, Samuel J. Tilden, and Louis H. Meyer, of the city and State of New York; J. Edgar Thomson, of the city of Philadelphia, and State of Pennsylvania; and Samuel Hanna, of the town of Fort Wayne, and State of Indiana, of the first part, and John Ferguson and Samuel J. Tilden, of the city and State of New York, of the second part, witnesseth:

Whereas The Pittsburgh, Fort Wayne and Chicago Railway Company is vested with franchises to be a corporation, granted to the said company by the States of Pennsylvania, Illinois, and Indiana, respectively, and has become duly organized as a corporation, in conformity to the provisions of the said grants, with capacity, in its corporate
102 character, to take, hold, and exercise other franchises, and particularly with capacity to acquire, hold, maintain, and operate the continuous railway extending from Pittsburgh, in the State of Pennsylvania, to Chicago, in the State of Illinois, commonly known as the Pittsburgh, Fort Wayne and Chicago Railroad, together with its equipments and appurtenances:

And whereas the said company has agreed with the parties of the first part to buy the aforesaid railway, and, in evidence of a portion of the consideration for the same, has made and delivered to the parties of the first part its bonds, amounting in the aggregate to the sum of five millions and two hundred and fifty thousand dollars, all of which bonds bear date on the first day of March, in the year one thousand eight hundred and sixty-two, and are payable at the office or agency of the said company, in the city of New York, upon the first day of July, in the year one thousand nine hundred and twelve, and are redeemable, at the option of the company, at any time after the first day of July, one thousand eight hundred and sixty-seven, on any day on which a half-yearly instalment of interest shall fall due; and are convertible, at the option of the holders thereof, upon any such day, into bonds to be issued and secured in the same manner as the said bonds, but bearing interest at the rate of six per cent., and irredeemable, except by a sinking fund of one per cent. per annum, on the whole amount of the said six per cent. bonds which shall have been issued, to be reserved and applied in the manner hereinafter specified; all of which bonds originally issued as aforesaid, bear interest at the rate of seven per centum per annum, payable semi-annually at the office or agency of the said company, in the city of New York; of which bonds six hundred and fifty, numbered consecutively from 1 to 650, inclusively, are each for one thousand dollars, and four hundred and fifty, numbered consecutively from 651 to 1,100, inclusively, are each for five hundred dollars, and the interest on all of which said eleven hundred bonds is payable on the first days of January and July in each year; six hundred and fifty, numbered consecutively from 1,101 to 1,750, inclusively, are each for one thousand dollars, and four hundred and fifty, numbered consecutively from 1,751 to 2,200, inclusively, are each for five hundred dollars, and the interest on which said eleven hundred bonds is payable on the first days of February and August in each year; six hundred and fifty, numbered consecutively from 2,201 to 2,850, inclusively, are each for one thousand dollars, and four hundred and fifty, numbered consecutively from 2,851 to 3,300, inclusively, are each for five hundred dollars, and the interest on all of which said eleven hundred bonds is payable on the first days of March and September in each
103 year; six hundred and fifty, numbered consecutively from 3,301 to 3,950, inclusively, are each for one thousand dollars, and four hundred and fifty, numbered consecutively from 3,951 to 4,400, inclusively, are each for five hundred dollars, and the interest on all of which

said eleven hundred bonds is payable on the first days of April and October in each year; six hundred and fifty, numbered consecutively from 4,401, to 5,050, inclusively, are each for one thousand dollars, and four hundred and fifty, numbered consecutively from 5,051 to 5,500, inclusively, are each for five hundred dollars, and the interest on all of which said eleven hundred bonds is payable on the first days of May and November in each year; six hundred and fifty, numbered consecutively from 5,501 to 6,150, inclusively, are each for one thousand dollars, and four hundred and fifty, numbered consecutively from 6,151 to 6,600, inclusively, are each for five hundred dollars, and the interest on all of which said eleven hundred bonds is payable on the first days of June and December in each year. All of which six thousand and six hundred bonds are in the form following:

"No. .] UNITED STATES OF AMERICA. [$. .

"STATES OF PENNSYLVANIA, OHIO, INDIANA, AND ILLINOIS.

"*Pittsburgh, Fort Wayne and Chicago Railway Company.*

"FIRST MORTGAGE BONDS.

"Know all men by these presents that the Pittsburgh, Fort Wayne and Chicago Railway Company are indebted to John Ferguson and Samuel J. Tilden, of the city of New York, or bearer, in the sum of dollars, lawful money of the United States of America, which the said company promise to pay to the said John Ferguson and Samuel J. Tilden, or to the bearer hereof, on the first day of July, in the year one thousand nine hundred and twelve, at the office or agency of the said company in the city of New York, with interest thereon at the rate of seven per centum, per annum, payable semi-annually, at the said office or agency in the city of New York, on the first days of and in each year, on the presentation and surrender of the annexed coupons as they severally become due; and in case of the non-payment of any half-yearly instalment of interest which shall have become payable, and shall have been demanded, if such default shall continue for three months after the maturity of the said instalment, the principal of this bond shall become due in the manner and with the effect provided in the deed of trust hereinafter mentioned. But it is hereby provided, at any time after the first day of July, one one thousand eight hundred and sixty-seven, the said company, on any day on which a half-yearly instalment of interest shall fall due, 104 may at their option, redeem at par the principal of this bond.

And it is further agreed, that this bond is convertible, at the option of the holder, upon any day upon which any such instalment of interest shall become payable, into a bond to be issued and secured in the same manner as this bond, but bearing interest at the rate of six per cent., and irredeemable except by a sinking fund of one per cent. per annum on the whole amount of the said six per cent. bonds which shall have been issued, to be reserved and applied in the manner specified in the said deed of trust.

"This bond is one of a series of eleven hundred bonds: six hundred and fifty for one thousand dollars each, and four hundred and fifty for five hundred dollars each, which, with five other series of the like number and denominations, form an issue of sixty-six hundred bonds, numbered from one to sixty-six, inclusively, and amounting in the aggre-

gate to five millions and two hundred and fifty thousand dollars, all bearing date on the first of March, 1862, and all of like tenor, except that the coupons of the six several series mature on the first days of the six successive months of each half-year; and the payment of all of which bonds is secured by a deed of trust dated the first day of March, 1862, duly executed and delivered by James F. D Lanier, Samuel J. Tilden, Louis H. Meyer, J. Edgar Thomson, and Samuel Hanna to John Ferguson and Samuel J. Tilden, trustees, and conveying the Pittsburgh, Fort Wayne and Chicago Railway, and the equipments, appurtenances, and things therein described.

"And this bond is also entitled to the benefits of the sinking fund by the said deed of trust provided.

"The person appearing on the voting bond register of the said company as the holder of this bond, at the time of any meeting of the stockholders of the said company, will be entitled to one vote at such meeting for every two hundred dollars of the par amount hereof. The right to vote upon this bond is transferable on the written order of the person last registered as its holder, or on the production of the bond by the holder.

"It is agreed between the said company and the holder of this bond that no recourse shall be had for its payment to the individual liability of any stockholder of the said company; and that, in case of any default in the payment hereof, the said company hereby waives the benefit of any extension, stay, or appraisement laws now existing, or that may hereafter exist.

"This bond shall pass by delivery, or by transfer on the books of the company, in the city of New York. After a registration of ownership, certified hereon by the transfer agent of the company, no transfer, except on the books of the company, shall be valid, unless the last transfer be to bearer, which shall restore transferability by delivery. But this bond shall continue subject to successive registration and transfers to bearer as aforesaid, at the option of each holder.

"This bond shall not become obligatory until it shall have been authenticated by a certificate endorsed hereon, and duly signed by the trustees.

"In witness whereof the said company have caused their corporate seal to be hereto affixed, and the same to be attested by the signatures of their president and secretary, and have also caused the coupons hereto annexed to be signed by their secretary, on this first day of March, in the year one thousand eight hundred and sixty-two.

"G. W. CASS, *President.*

"W. H. BARNES, *Secretary.*"

And whereas provision is herein made for the issue of bonds bearing interest at the rate of six per centum per annum, but irredeemable, except by a special sinking fund herein established, into which the bonds hereinbefore described may be converted, at the option of the respective holders thereof, in the manner and on the conditions herein prescribed:

And whereas the intention of these presents is, and is hereby declared to be, that all of the said bonds, whether of the original seven per cent. issue, or of the subsequent six per cent. issue, for the purpose of conversion as aforesaid, shall be equally secured by these presents in proportion to the amount of the principal thereof unpaid, with the interest on the said principal accrued and unpaid, without discrimination or preference with reference to the times of the actual issue of the said

bonds, or of the maturing of the principal thereof, or the maturing of any interest which shall have accrued thereon:

Now this indenture witnesseth: That the parties of the first part, in consideration of the premises, and of one dollar to them in hand paid, the receipt whereof is hereby acknowledged, and in order to secure the payment of the principal and interest of the bonds aforesaid, issued or to be issued, as herein recited and provided, and every part of the said principal and interest, as the same shall become payable, according to the tenor of the said bonds, and of the coupons thereto annexed, have granted, bargained, and sold, and do, by these presents, grant, bargain, sell, convey, and transfer unto the parties of the second part, all the right, title, and interest of them the parties of the first part, and of any or either of the said parties, acquired by virtue of a deed bearing date the eighteenth day of February, 1862, and made to the parties hereto of the first part by John Ferguson and Thomas E. Walker, both
106 of the city and State of New York, trustees and special master commissioners, in pursuance of decrees of the circuit courts of the United States, for the northern district of Ohio, the western district of Pennsylvania, the district of Indiana, and the northern district of Illinois, in causes in chancery, in the said courts then depending, wherein Charles Moran and others were complainants, and the Pittsburg, Fort Wayne and Chicago Railroad Company and others were defendants, or acquired by virtue of a deed bearing date the twenty-sixth day of February, 1862, made to the parties hereto of the first part by the Pittsburgh, Fort Wayne and Chicago Railroad Company, pursuant to the aforesaid decrees, of, in, and to all and singular the continuous railway extending from its eastern terminus in Pittsburgh, in the State of Pennsylvania, to Chicago, in the State of Illinois, and commonly known as the Pittsburgh, Fort Wayne and Chicago Railroad or Railway, including all the railways, ways, and rights of way, depot grounds, and other lands; all tracks, bridges, viaducts, culverts, fences, and other structures; all depots, station-houses, engine-houses, car-houses, freight-houses, wood-houses, and other buildings; and all machine shops, and other shops, held or acquired for use in connection with the said railway, or the business thereof; and including, also, all locomotives, tenders, cars, and other rolling stock or equipment, and all machinery, tools, implements, fuel, and materials for the constructing, operating, repairing, or replacing the said railway, or any part thereof, or any of its equipments or appurtenances; and also all franchises connected with or relating to the said railway, or the construction, maintenance, or use thereof; and all the property, franchises, rights, and things, of whatever name or nature, which were conveyed by the aforesaid deeds of the said trustees and master commissioners, and of the said company, to the parties of the first part hereto; subject, nevertheless, as to so much of the said railroad lying between the Federal-street station, in Allegheny City, in the State of Pennsylvania, and the passenger depot of the Pennsylvania Railroad on Liberty street, in the city of Pittsburgh, in said State, and of the other property connected therewith, as is embraced within a certain mortgage made by the Ohio and Pennsylvania Railroad Company to Thomas T. Firth, of the city of Philadelphia, and Reuben Miller, jr, of the city of Pittsburgh, bearing date May 6th, 1856, to the lien created by the said mortgage; and subject, also, as to the rights of way, depot grounds, lots and premises in the city and vicinity of Chicago, purchased during the pendency of the said causes, in which Charles Moran and others are complainants, and the said Pittsburgh, Fort Wayne and Chicago Railroad Company and others are de-

107 fendants, as aforesaid, by the agency of the receiver in the said causes, to the lien of the vendors for the purchase-money of the same; and subject, also, as to any real estate included in the aforesaid sale by the said trustees and master commissioners to the lien, if any such exists, of any vendor or former owner of said real estate, not otherwise provided to be paid by the decrees or orders in the said causes: Provided, nevertheless, and it is the true intent and meaning of these presents, that nothing herein contained shall be construed to express or imply any covenant by the parties of the first part, or either of them, but that this instrument shall operate to convey, in behalf of the said parties, all the estates and interests in the railway and appurtenances, property, rights, franchises and things hereinbefore described, which the said parties or either of them might hold by virtue of the aforesaid conveyances, and which the said parties, each for himself, and not one for the other can lawfully convey, and no more; and that the said estates and interests are hereby charged with, and shall pass, by virtue of these presents, subject to the payment of all liabilities incurred in respect to the said railway or its business by the said parties of the first part during their possession of the said railway, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversions, remainders, tolls, incomes, rents, issues, and profits thereof; and, also, all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, and to the same, and any and every part thereof, with the appurtenances: To have and to hold the above-described premises and appurtenances, subject, as aforesaid, unto the said parties of the second part, as joint tenants, and not as tenants in common, and the survivor of them, and to the heirs and assigns of such survivor, to the only proper use and behoof of the said parties of the second part, and of the survivor of them, and of the heirs and assigns of such survivor, in trust, nevertheless, for the purposes herein expressed, to wit:

ARTICLE 1. Until default shall be made in the payment of principal or interest of the said bonds, or of some of them, or until default shall be made in respect to something herein required to be done or kept by the Pittsburgh, Fort Wayne and Chicago Railway Company, the said Pittsburgh, Fort Wayne and Chicago Railway Company shall be suffered and permitted to possess, manage, operate, and enjoy the said railway from Pittsburgh to Chicago, with its equipments and appurtenances, and to take and use the rents, incomes, profits, tolls, and issues thereof, in the same manner and with the same effect as if this deed had not been made.

108 ARTICLE 2. In case default shall be made in the payment of any interest on any of the aforesaid bonds issued or to be issued, according to the tenor of the coupons thereto annexed, or in any payment required to be made into the special sinking fund herein provided, or in any requirement to be done or kept by the Pittsburgh, Fort Wayne and Chicago Railway Company; and if such default shall continue for the period of three months, it shall be lawful for the said trustees, or the survivor of them, or their or his successors, personally or by their or his attorneys or agents, to enter into and upon all and singular the premises hereby conveyed or intended so to be, and each and every part thereof, and to have, hold, and use the same, operating by their or his superintendents, managers, receivers, or servants, or other attorneys or agents, the said railway, and conducting the business thereof, and making from time to time all repairs and replacements, and such useful alter-

ations, additions, and improvements thereto as may seem to them or him to be judicious; and to collect and receive all tolls, freights, incomes, rents, issues, and profits of the same, and of every part thereof; and, after deducting the expenses of operating the said railway and conducting its business, and of all the said repairs, replacements, alterations, additions, and improvements, and all payments which may be made for taxes, assessments, charges, or liens prior to the lien of these presents upon the said premises, or any part thereof, as well as a just compensation for their or his own services, to apply the moneys arising as aforesaid to the payment of interest, in the order in which such interest shall have become or shall become due, rateably to the persons holding the coupons evidencing the right to such interest, and to the payment, in like order, of the corresponding contributions to the special sinking fund herein established for the six per cent. bonds; and, after paying all interest which shall have become due, and all the said contributions to the special sinking fund, to apply the same to the satisfaction of the principal of the aforesaid bonds of the original and substituted issues which may be at that time unpaid, rateably and without discrimination or preference.

ARTICLE 3. In case default shall be made as aforesaid, and shall continue as aforesaid, it shall likewise be lawful for the said trustees, or the survivor of them, or their or his successors, after entry as aforesaid, or other entry, or without entry, personally or by their or his attorneys or agents, to sell and dispose of all and singular the premises hereby conveyed, or intended so to be, at public auction, in the city of New York, or at such place within any of the States in which any part of the said railway is situate, which the said trustees may designate, and at such time as they may appoint, having first given notice of the place
109 and the time of such sale by advertisement published not less than three times a week for six weeks, in one or more newspapers in the cities of New York, Pittsburgh, Chicago, and in Crestline and Fort Wayne, or some other places in the judicial districts of the United States in which Crestline and Fort Wayne are situated, or to adjourn the said sale from time to time, in their or his discretion, and if so adjourning, to make the same at the time and place to which the same may be so adjourned, and to make and deliver to the purchaser or purchasers thereof good and sufficient deed or deeds in the law for the same in fee-simple, which sale made as aforesaid shall be a perpetual bar both in law and equity against the parties of the first part, and all other persons lawfully claiming or to claim the said premises, or any part thereof, by, from, though, or under them, or any or either of them; and after deducting from the proceeds of such sale just allowances for all expenses of the said sale, including attorneys' and counsel fees, and all other expenses, advances, or liabilities which may have been made or incurred by the said trustees in operating or maintaining the said railway, or in managing its business while in possession, and all payments which may have been made by them for taxes or assessments, and for charges and liens prior to the lien of these presents on the said premises, or any part thereof, as well as compensation for their own services, to apply the said proceeds to the payment of the principal of such of the aforesaid bonds of the original issue and of the substituted issue as may be at that time unpaid, whether or not the same shall have previously become due, and of the interest which shall at that time have accrued on the said principal and be unpaid—without discrimination or preference, but rateably to the aggregate amount of such unpaid principal and accrued and unpaid interest; and if, after the satisfaction

thereof, a surplus of the said proceeds shall remain, to apply the said surplus according to the provisions of a deed of trust bearing even date herewith, and made by the parties of the first part to the parties of the second part, subject to these presents, to secure five millions and one hundred and sixty thousand dollars of mortgage bonds, known as second-mortgage bonds of the said company, so far as the said trusts shall be then unfulfilled, or to pay over so much of said surplus as may be necessary for that purpose to the trustees then acting under the said deed; and if after so doing a surplus of the said proceeds shall still remain, to apply or pay over the same in like manner upon the bonds, or to the trustees then acting under a deed of trust, bearing even date herewith, and made by the parties of the first part to the parties of the second part, subject to these presents, and to the said last-mentioned trust deed, to secure two millions of dollars of bonds of the said
110 company known as third-mortgage or income bonds; and if after so doing a surplus shall still remain, to pay over the same to the said Pittsburgh, Fort Wayne and Chicago Railway Company, or to such other parties as may be entitled to receive the same.

And it is hereby declared that the receipt or receipts of the said trustees shall be a sufficient discharge to the purchaser or purchasers of the premises, for his or their purchase-money, and that such purchaser or purchasers, his or their heirs, executors, or administrators, shall not, after payment thereof and having such receipt, be liable to see to its being applied upon or for the trusts and purposes of these presents, or in any manner howsoever be answerable for any loss, misapplication, or non-application of such purchase-money, or any part thereof, or be obliged to enquire into the necessity, expediency, or authority of or for any such sale.

ARTICLE 4. At any sale of the aforesaid property, or any part thereof, whether made by virtue of the power herein granted, or by judicial authority, the trustees shall bid for and purchase, or cause to be bid for and purchased, the property so sold, or any part thereof, in behalf of all the holders of the bonds secured by this instrument and then outstanding, in the proportion of the respective interests of such bondholders—at a reasonable price, if but a portion of the said property shall be sold; or if all of it be sold, at a price not exceeding the whole amount of such bonds outstanding, with the interest accrued thereon.

ARTICLE 5. In case default shall be made in the payment of any half-year's interest on any of the aforesaid bonds, whether of the original or substituted issues, at the time and in the manner in the coupon issued therewith provided, the said coupon having been presented, and the payment of the interest therein specified having been demanded; and that such default shall continue for the period of three months after the said coupon shall have become due; or incase default shall be made in the payment to the trustees of any part of any semi-annual instalment of the one per cent. per annum for the special sinking fund herein provided for the redemption of the substituted issue of six per cent. bonds, and such default shall continue for the period of three months after the said payment shall have become due, then and in either of such cases the principal of all the bonds secured hereby, whether of the original or substituted issues, shall, at the election of the trustees, become immediately due and payable, anything contained in the said bonds or herein to the contrary notwithstanding; but a majority in interest of the holders of the said bonds may, in writing or by a vote of a meeting duly held, instruct the trustees to declare the said principal to be due, or to
111 waive the right so to declare, on such terms and conditions as

such majority shall deem proper, or may annul or reverse the election of the trustees, provided that no action of the trustees or bondholders shall extend to or be taken to affect any subsequent default, or to impair the rights resulting therefrom.

ARTICLE 6. In any six months—the first such period commencing on the first day of January, 1862—in which the net earnings of the said railway shall exceed the amount necessary to pay the interest upon all the bonds of the said company, secured by these presents or by either of the two several trust deeds bearing even dates herewith, and then outstanding, including the contribution to the special sinking fund for the six per cent. bonds herein provided, and a dividend of three per cent. upon six millions and five hundred thousand dollars of capital stock, such surplus shall be reserved, and shall, within sixty days after the expiration of the said six months, be paid over to the trustees as a sinking fund for the redemption of the bonds secured by these presents: Provided, that after the redemption of bonds amounting in the aggregate to two millions and five hundred thousand dollars, the said sinking fund may be limited to the application of not less than one per cent. per annum upon the aggregate of bonds outstanding at the time of such limitation; and the said sinking fund may at any time hereafter be varied in its amount, by agreement between the said company and the holders of the bonds secured hereby acting by a majority in interest; and, with the assent of the trustees, the said surplus or any part thereof may, as the same shall from time to time arise, be applied to the improvement of the said railway, its equipments and appurtenances.

The trustees shall deposit the said surplus in some safe depository in the city of New York; and the said moneys, together with all accumulations of interest thereon that may actually come into the hands of the trustees, shall be invested by the trustees in the purchase of bonds secured by these presents, provided the same can be purchased at a rate not exceeding the par of said bonds, with the interest accrued thereon, and the bonds so purchased shall be held by the trustees, and immediately stamped or endorsed as belonging to the said sinking fund, but shall remain in force, and the interest thereon shall continue to be paid by the said Pittsburgh, Fort Wayne and Chicago Railway Company, and the amount thereof shall be added to and applied as a part of the capital of the sinking fund hereby established, and be invested in the manner and with the limitations herein provided.

And preparatory to such purchase of bonds, the trustees shall give ten days' notice thereof, in one or more of the daily newspapers
112 published in the city of New York, and shall make the said purchase at the lowest price or prices at which the bonds may be offered, pursuant to such notice, or at such lower price or prices as they may be able to obtain the same, but not exceeding the par and interest of said bonds; and in case the said bonds cannot be purchased at par and interest, within three months after the expiration of the notice aforesaid, then the trustees shall invest the said moneys in the purchase of the bonds of the said company secured by a second lien, at the lowest prices, not exceeding par and interest, at which they may be obtained, after notice as aforesaid. And if bonds secured by the said second lien cannot be purchased as aforesaid, the trustees shall, in like manner, invest the said moneys in bonds of the said company, known as the third-mortgage or income bonds. And in case of inability to invest in any of the three classes of securities, in the manner herein provided, the trustees shall invest the same in the said securities according to their best discretion.

ARTICLE 7. The Pittsburgh, Fort Wayne and Chicago Railway Company shall from time to time prepare such bonds as may be necessary for the purposes of the exchange herein provided, which bonds shall in their form be identical with those originally issued in pursuance of these presents, except that their principal shall be irredeemable otherwise than by the operation of the special sinking fund herein provided; that they shall bear interest at the rate of six per centum per annum, and that they shall be entitled to the benefit of the said special sinking fund, in addition to that herein provided from the surplus earnings of the said railway; which special sinking fund shall consist of one per cent. per annum upon the aggregate amount of six per cent. bonds issued in substitution for the seven per cent. bonds hereby secured, from the days when the last preceding coupon at the rate of seven per cent. matured, which one per cent. shall be paid to the trustees in semi-annual instalments of one-half of one per cent. upon the days on which the semi-annual instalment of six per cent. interest shall be payable. The holder of any seven per cent. bond, of the original issue secured by these presents, shall be entitled, after the first day of July, 1867, to convert such bond into a six per cent. bond of the issue herein provided, by notifying in writing the company, on any day on which any semi-annual instalment of interest on the said bonds shall be payable, of his desire so to convert the said bond; and on depositing the said bond with the said company for conversion, it shall be the duty of the company, within a reasonable period, to duly execute a six per cent. bond for exchange, and of the trustees for the time being, to countersign and deliver to the company such six per cent. bond, upon the cancellation of the seven per cent. bond; which cancellation shall be
113 made in such manner as the trustees may direct, and shall be recorded by the company. Conversions may be made on such other notice as may be satisfactory to the company and the trustees; but such conversions shall in all cases be as of the date of the maturity of the last preceding coupon of the bonds so converted. The moneys coming into the special sinking fund for the redemption of the six per cent. bonds shall be deposited in some safe depository in the city of New York, and as often as the moneys in the sinking fund derived from the conversion of bonds made on or as of any particular date, shall amount to a sum sufficient to redeem one or more such bonds, the said moneys shall, without unreasonable delay, be applied to the redemption of bonds converted at or as of the said date, as follows:

The trustees shall designate by lot so many of the bonds as they have money to pay, and shall give notice to the numbers designated, personally, to any owner or holder of the bonds known to them, and by advertisement in one or more daily newspapers in the city of New York, once a week, until the date of the next interest payment, if any owner or holder of the said bonds is unknown to them; and, on presentation and delivery of the said bonds, shall apply the money so received by them to the payment thereof. And all future interest on any of the said bonds, not presented and delivered on or before the date of the said next interest payment, shall cease from and after such date, and the company shall be no longer liable for the said interest. The trustees shall, without unreasonable delay, cancel the bonds so redeemed by them, and return such bonds to the company; and the trustees and the company shall keep separate registries of all the bonds so redeemed or so designated for redemption, and the registry of the company shall be at all reasonable times open to the inspection of each of the bondholders and stockholders of the company, and the numbers and amounts

of the bonds so redeemed or designated for redemption, shall be reported by the company in each annual statement made to the stockholders, and the cancelled bonds shall, on the request of the meeting of the stockholders, be produced and exhibited.

ARTICLE 8. The aggregate amount of the capital stock of the said Pittsburgh, Fort Wayne and Chicago Railway Company, outstanding at any one time, shall never exceed, in par value, six millions and five hundred thousand dollars, unless the holders of bonds secured by these presents shall have, by a vote at a meeting duly held, expressly consented to such increase.

ARTICLE 9. The Pittsburgh, Fort Wayne and Chicago Railway Company shall, from time to time, and at all times hereafter, and
114 as often as thereunto requested by the trustees, execute, deliver, and acknowledge, all such further deeds, conveyances, and assurances in the law, for the better assuring unto the trustees, and their successors in the trust hereby created, upon the trusts herein expressed, the railway, equipments, and appurtenances hereinbefore mentioned or intended so to be, and all other property and things whatsoever, which may be hereafter acquired, for use in connection with the same or any part thereof, and all franchises now held or hereafter acquired, including the franchise to be a corporation, as by the trustees or the survivor of them, or their successors, or by their or his counsel learned in the law shall be reasonably advised, devised, or required.

ARTICLE 10. The trustees shall have full power in their discretion, and upon the written request of the Pittsburgh, Fort Wayne and Chicago Railway Company, to convey, by way of release or otherwise, to the persons designated by the said company, the whole or any part of the lands situate in the city of Chicago, and State of Illinois, and heretofore occupied by, or purchased for the use of, the Pittsburgh, Fort Wayne and Chicago Railroad Company; and, in order to substitute other lands or to allow or aid the erection thereon of warehouses or other buildings to be used in connection with the business of the said railway, or to otherwise facilitate the said business, shall have like power to convey as aforesaid any lands acquired or held for the purposes of stations, depots, shops, or other buildings, or the uses connected therewith; and shall also have power to convey as aforesaid any lands or property which, in the judgment of the trustees, shall not be necessary for use in connection with the said Pittsburg, Fort Wayne and Chicago Railway, or which may have been held for a supply of fuel, gravel, or other material; and also, to convey as aforesaid any lands which may become disused by reason of a change of the location of any station-house, depot, shop, or other buildings connected with the said railway, and such lands occupied by the track and adjacent to such station-house, depot, shop, or other building, as the said company may deem it expedient to disuse or abandon by reason of such change; and to consent to any such change and to such other changes in the location of the track as, in their judgment, shall have become expedient; and to make and deliver the conveyances necessary to carry the same into effect; but any lands that may be acquired for permanent use in substitution for any so released shall be conveyed to the trustees upon the trusts of these presents; and the trustees shall also have full power to allow the said company from time to time to dispose of, according to their discretion, such portions of the equipments, machinery, and
115 implements at any time held or acquired for the use of the said railway as may become unfit for such use, replacing the same by new, which shall be conveyed to the trustees or be otherwise made subject to the operation of these presents.

ARTICLE 11. If the said Pittsburgh, Fort Wayne and Chicago Railway Company shall well and truly pay the sums of money herein required to be paid by the said company, and all interest thereon, at the times and in the manner herein specified, and shall well and truly keep and perform all the things herein required to be kept or performed by the said company, according to the true intent and meaning of these presents, then and in that case the estate, right, title, and interest of the said parties of the second part, and of their successors in the trust hereby created, shall cease, determine, and become void; otherwise the same shall be and remain in full force and virtue.

ARTICLE 12. The said Pittsburgh, Fort Wayne and Chicago Railroad Company shall at all times hereafter keep a book at their office or agency in the city of New York, which shall be designated as the voting register of the first-mortgage bondholders, and shall be distinct from the transfer register of the bonds. Any holder of any of the said bonds shall be entitled to have his name and address, and the denomination and the number of every of the said bonds held by him, entered in such registry on presenting at the aforesaid office or agency a written statement of the said particulars, signed by himself, and if required, duly verifying his title thereto by producing the bonds or upon filing with the company the written order of the person last registered as the holder, or in such other mode as may be prescribed by the regulations for such verification. The trustees may, in the first instance, prescribe the said regulations, subject to the power hereby declared of the bondholders, acting by a majority in interest, to adopt, alter, or repeal from time to time the said regulations, and generally to establish such as may seem to them expedient. Such registration shall authenticate the right of the holder of every bond so registered to vote on the said bond, as provided therein, at every general and special meeting of the stockholders of the said company, and shall also entitle the said holder to notice, in such mode and form as may be fixed by regulations prescribed or established as aforesaid, of all meetings of the first-mortgage bondholder. The trustees, and each of them, shall at all times have free access to such book of registry, and shall from time to time, and at all times on request in writing of either of them, be furnished with a copy thereof by the said company, and shall have a right to require, at their option, that any act or resolution of the
116 said bondholders, affecting their duties or the interest of the trust hereby created, shall be authenticated by the signatures of all the persons assenting thereto as well as by a minute of the proceedings of the meeting. Meetings of the first-mortgage bondholders may be called by the trustees or in such other mode as may be fixed by regulations prescribed or established as aforesaid, and the bondholders may vote thereat in person or by proxy; and the quorum may be defined and such other regulations or by-laws in respect to such meetings may be from time to time established, altered, or repealed by the bondholders, acting by a majority in interest, as to them shall seem expedient; and until the bondholders shall act, such powers may be temporarily exercised by the trustees.

ARTICLE 13. It is hereby declared and agreed that it shall be the duty of the trustees to exercise the power of entry hereby granted, or the power of sale hereby granted, or both, or to take appropriate legal proceedings to enforce the rights of the bondholders under these presents, upon the requisition, in writing, as hereinafter specified as applicable to the several cases of default, in the manner and subject to the qualifications hereinafter provided, as follows:

1. If the default be as to interest or principal of any bonds, either

of the original seven per cent. issue, or of the substituted six per cent. issue, provided for by these presents, or in respect to any instalment of the special sinking fund hereby established for the redemption of the said six per cent. bonds, such requisition upon the said trustees shall be by holders of not less than one hundred thousand dollars in aggregate amount of the said bonds; and upon such requisition, and a proper indemnification by the persons making the same to the trustees against the costs and expenses to be by them incurred, it shall be the duty of the trustees to enforce the right of the bondholders under these presents by entry, sale, or legal proceedings, as they, being advised by counsel learned in the law, shall deem most expedient for the interest of all the holders of the said bonds.

2. If the default be in respect to any payment into the sinking fund established by article sixth of these presents, or be in the creation or issue of capital stock by the said Pittsburgh, Fort Wayne and Chicago Railway Company, in excess of the aggregate amount fixed by article eighth of these presents, or be in the omission of any act or thing required by article ninth of these presents, for the further assuring of the title of the trustees to any property or franchises now possessed or hereafter acquired, or in the omission to comply with each and
117 all the provisions of article seventh and twelfth of these presents, or with any other provision herein contained to be performed or kept by the said company, then, and in either of such cases, the requisitions shall be as aforesaid, but it shall be within the discretion of the trustees to enforce or waive the rights of the bondholders by reason of such default, subject to the power hereby declared of a majority in interest of the holders of said bonds, by requisition in writing, or by a vote at a meeting duly held to instruct the said trustees to waive such default, or to enforce their rights by reason thereof: Provided, that no action of the said trustees, or bondholders, or both, in waiving such defaults, or otherwise, shall extend to or be taken to affect any subsequent default, or to impair the rights resulting therefrom.

ARTICLE 14. It is mutually agreed by and between the parties hereto, that the word "trustees," as used in these presents, shall be construed to mean the trustees for the time being, whether one or both be original or new; and, whenever a vacancy shall exist, to mean the surviving or continuing trustee; and such trustee shall, during such vacancy, be competent to exercise all the powers granted by these presents to the parties of the second part. And it is mutually agreed by and between the parties hereto, as a condition on which the parties of the second part have assented to these presents; that the said trustees shall not be in any manner responsible for any default or misconduct of each other; that the said trustees shall be entitled to just compensation for all services which they may hereafter render in their trust, to be paid by the said company; that either of the said trustees, or any successor, may resign and discharge himself of the trust created by these presents, by notice in writing to the Pittsburgh, Fort Wayne and Chicago Railway Company, and to the existing trustee, if there be such, three months before such resignation shall take effect, or such shorter time as they may accept as adequate notice, and upon the due execution of the conveyances hereinafter required; that the said trustees, or either of them, may be removed by the vote of a majority in interest of the holders of the aforesaid bonds, the said vote being had at a meeting duly held of the said bondholders, and attested by an instrument under the hands and seals of the persons so voting; that in case at any time hereafter, either of the said trustees, or any trustee here-

after appointed, shall die, or resign, or be removed as herein provided for by a court of competent jurisdiction, or shall become incapable or unfit to act in the said trust, a successor to such trustee shall be appointed by the surviving or continuing trustee, with the consent
118 of the holders for the time being of a majority in interest of the said bonds then outstanding, or the consent of a meeting, duly held, of the holders of the said bonds; and the trustee so appointed, with the trustee so surviving or continuing, shall thereupon become vested with all the powers, authorities, and estate, granted to or conferred upon the parties of the second part, by these presents, and all the rights and interest requisite to enable him to execute the purposes of this trust, without any further assurance or conveyance, so far as such effect may be lawful; but the surviving or continuing trustee shall immediately execute all such conveyances and other instruments as may be fit or expedient for the purpose of assuring the legal estate in the premises, jointly with himself, to the trustee so appointed; and upon the death, resignation, or removal of any trustee, or any appointment in his place in pursuance of these presents, all his powers and authorities by virtue hereof shall cease; and all the estate, right, title, and interest in the said premises, of any trustee so dying, resigning, or being removed, shall, if there be a co-trustee surviving or continuing in office, wholly cease and determine; but the said trustee so resigning or being removed, shall, on the written request of the new trustee who may be appointed, immediately execute a deed or deeds of conveyance to vest in such new trustee, jointly with the continuing trustee, and upon the trusts herein expressed, all the property, rights, and franchises, which may be at that time held upon the said trusts; Provided, nevertheless, that it is hereby agreed and declared that for the first vacancy in the trust hereby created which may happen as hereinbefore provided, in respect to either of the parties of the second part hereto, Charles Lanier, of the city and State of New York, is hereby designated and appointed to fill such vacancy, with the same effect as if he had been appointed in the manner hereinbefore specified; and in case it shall at any time hereafter prove impracticable, after reasonable exertions, to appoint in the manner hereinbefore provided a successor in any vacancy which may have happened in said trust, or in case that the trust shall become wholly vacant, application, in behalf of all the holders of the bond secured hereby, may be made by the surviving or continuing trustee; or, if the trust be wholly vacant, by holders of the said bonds to the aggregate amount of one hundred thousand dollars, to any circuit court of the United States for any judicial district in which any part of the aforesaid railway may be situate, for the appointment of a new trustee, or new trustees.

In witness whereof the parties of the first part have hereunto set their respective hands and seals, and the parties of the second
119 part have also set their respective hands and seals, for the purpose of evidencing their acceptance of the trust hereby created, on the day and year first above written.

J. F. D. LANIER. [L. S.]
SAMUEL J. TILDEN. [L. S.]
LOUIS H. MEYER, [L. S.]
J. EDGAR THOMSON. [L. S.]
SAMUEL HANNA. [L. S.]
JOHN FERGUSON. [L. S.]
SAMUEL J. TILDEN. [L. S.]

Signed, sealed, and delivered in presence of—
JAMES P. SINNOTT and
JOHN L. DRUMMOND.

120 Also, second-mortgage trust deed, dated March 1, 1862, recites second-mortgage bonds, provides for selling the property in the city of New York, offered as follows:

F. M. Hutchinson, jr., No. 2.

Second-mortgage trust deed.

This indenture, made this first day of March, in the year of our Lord one thousand eight hundred and sixty-two, between James F. D. Lanier, Samuel J. Tilden, and Louis H. Meyer, of the city and State of New York; J. Edgar Thomson, of the city of Philadelphia, and State of Pennsylvania; and Samuel Hanna, of the town of Fort Wayne, and State of Indiana; of the first part, and John Ferguson and Samuel J. Tilden, of the city and State of New York, of the second part, witnesseth:

Whereas The Pittsburgh, Fort Wayne and Chicago Railway Company is vested with franchises to be a corporation, granted to the said company by the States of Pennsylvania, Illinois, and Indiana, respectively, and has become duly organized as a corporation, in conformity to the provisions of the said grants, with capacity, in its corporate character, to take, hold, and exercise other franchises, and particularly with capacity to acquire, hold, maintain, and operate the continuous railway extending from Pittsburgh, in the State of Pennsylvania, to Chicago, in the State of Illinois, commonly known as the Pittsburgh, Fort Wayne and Chicago Railroad, together with its equipments and appurtenances:

And whereas the said company has agreed with the parties of the first part to buy the aforesaid railway, and, in evidence of a portion of the consideration for the same, has made and delivered to the parties of the first part its bonds, amounting in the aggregate to the sum of five millions and one hundred and sixty thousand dollars; all of which
121 bonds bear date on the first day of March, in the year one thousand eight hundred and sixty-two, and are payable at the office or agency of the said company, in the city of New York, upon the first day of July, in the year one thousand nine hundred and twelve, and are redeemable, at the option of the company, at any time after the first day of July, one thousand eight hundred and sixty-seven, on any day on which a half-yearly installment of interest shall fall due; and are convertible, at the option of the holders thereof, upon any such day, into bonds to be issued and secured in the same manner as the said bonds, but bearing interest at the rate of of six per cent., and irredeemable, except by a sinking fund of one per cent. per annum on the whole amount of the said six per cent. bonds which shall have been issued, to be reserved and applied in the manner hereinafter specified: All of which bonds originally issued as aforesaid, bear interest, after the first day of April, 1862, at the rate of seven per centum per annum, payable semi-annually, at the office or agency of the said company, in the city of New York; of which bonds, seven hundred and sixty, numbered consecutively from 1 to 760, inclusively, are each for one thousand dollars; and two hundred, numbered consecutively from 761 to 960, inclusively, are each for five hundred dollars; and forty-three hundred,

after appointed, shall die, or resign, or be removed as herein provided for by a court of competent jurisdiction, or shall become incapable or unfit to act in the said trust, a successor to such trustee shall be appointed by the surviving or continuing trustee, with the consent
118 of the holders for the time being of a majority in interest of the said bonds then outstanding, or the consent of a meeting, duly held, of the holders of the said bonds; and the trustee so appointed, with the trustee so surviving or continuing, shall thereupon become vested with all the powers, authorities, and estate, granted to or conferred upon the parties of the second part, by these presents, and all the rights and interest requisite to enable him to execute the purposes of this trust, without any further assu ance or conveyance, so far as such effect may be lawful; but the surviving or continuing trustee sha immediately execute all such conveyances and other instruments as may be fit or expedient for the purpose of assuring the legal estate in the premises, jointly with himself, to the trustee so appointed; and upon the death, resignation, or removal of any trustee, or any appointment in his place in pursuance of these presents, all his powers and authorities by virtue hereof shall cease; and all the estate, right, title, and interest in the said premises, of any trustee so dying, resigning, or being removed, shall, if there be a co-trustee surviving or continuing in office, wholly cease and determine; but the said trustee so resigning or being removed, shall, on the written request of the new trustee who may be appointed, immediately execute a deed or deeds of conveyance to vest in such new trustee, jointly with the continuing trustee, and upon the trusts herein expressed, all the property, rights, and franchises, which may be at that time held upon the said trusts; Provided, nevertheless, that it is hereby agreed and declared that for the first vacancy in the trust hereby created which may happen as hereinbefore provided, in respect to either of the parties of the second part hereto, Charles Lanier, of the city and State of New York, is hereby designated and appointed to fill such vacancy, with the same effect as if he had been appointed in the manner hereinbefore specified; and in case it shall at any time hereafter prove impracticable, after reasonable exertions, to appoint in the manner hereinbefore provided a successor in any vacancy which may have happened in said trust, or in case that the trust shall become wholly vacant, application, in behalf of all the holders of the bond secured hereby, may be made by the surviving or continuing trustee; or, if the trust be wholly vacant, by holders of the said bonds to the aggregate amount of one hundred thousand dollars, to any circuit court of the United States for any judicial district in which any part of the aforesaid railway may be situate, for the appointment of a new trustee, or new trustees.

In witness whereof the parties of the first part have hereunto set their respective hands and seals, and the parties of the second
119 part have also set their respective hands and seals, for the purpose of evidencing their acceptance of the trust hereby created, on the day and year first above written.

J. F. D. LANIER. [L. S.]
SAMUEL J. TILDEN. [L. S.]
LOUIS H. MEYER, [L. S.]
J. EDGAR THOMSON. [L. S.]
SAMUEL HANNA. [L. S.]
JOHN FERGUSON. [L. S.]
SAMUEL J. TILDEN. [L. S.]

Signed, sealed, and delivered in presence of—
JAMES P. SINNOTT and
JOHN L. DRUMMOND.

120 Also, second-mortgage trust deed, dated March 1, 1862, recites second-mortgage bonds, provides for selling the property in the city of New York, offered as follows:

F. M. Hutchinson, jr., No. 2.

Second-mortgage trust deed.

This indenture, made this first day of March, in the year of our Lord one thousand eight hundred and sixty-two, between James F. D. Lanier, Samuel J. Tilden, and Louis H. Meyer, of the city and State of New York; J. Edgar Thomson, of the city of Philadelphia, and State of Pennsylvania; and Samuel Hanna, of the town of Fort Wayne, and State of Indiana; of the first part, and John Ferguson and Samuel J. Tilden, of the city and State of New York, of the second part, witnesseth:

Whereas The Pittsburgh, Fort Wayne and Chicago Railway Company is vested with franchises to be a corporation, granted to the said company by the States of Pennsylvania, Illinois, and Indiana, respectively, and has become duly organized as a corporation, in conformity to the provisions of the said grants, with capacity, in its corporate character, to take, hold, and exercise other franchises, and particularly with capacity to acquire, hold, maintain, and operate the continuous railway extending from Pittsburgh, in the State of Pennsylvania, to Chicago, in the State of Illinois, commonly known as the Pittsburgh, Fort Wayne and Chicago Railroad, together with its equipments and appurtenances:

And whereas the said company has agreed with the parties of the first part to buy the aforesaid railway, and, in evidence of a portion of the consideration for the same, has made and delivered to the parties of the first part its bonds, amounting in the aggregate to the sum of five millions and one hundred and sixty thousand dollars; all of which
121 bonds bear date on the first day of March, in the year one thousand eight hundred and sixty-two, and are payable at the office or agency of the said company, in the city of New York, upon the first day of July, in the year one thousand nine hundred and twelve, and are redeemable, at the option of the company, at any time after the first day of July, one thousand eight hundred and sixty-seven, on any day on which a half-yearly installment of interest shall fall due; and are convertible, at the option of the holders thereof, upon any such day, into bonds to be issued and secured in the same manner as the said bonds, but bearing interest at the rate of of six per cent., and irredeemable, except by a sinking fund of one per cent. per annum on the whole amount of the said six per cent. bonds which shall have been issued, to be reserved and applied in the manner hereinafter specified: All of which bonds originally issued as aforesaid, bear interest, after the first day of April, 1862, at the rate of seven per centum per annum, payable semi-annually, at the office or agency of the said company, in the city of New York; of which bonds, seven hundred and sixty, numbered consecutively from 1 to 760, inclusively, are each for one thousand dollars; and two hundred, numbered consecutively from 761 to 960, inclusively, are each for five hundred dollars; and forty-three hundred,

numbered consecutively from 961 to 5260, inclusively, are each for one thousand dollars; and the interest on all of which said bonds is payable as follows, that is to say: The interest on nine hundred and sixty of the said bonds numbered consecutively from 1 to 960, inclusively, is payable on the first days of January and July in each year; the interest on eight hundred and sixty of the said bonds, numbered consecutively from 961 to 1,820, inclusively, is payable on the first days of February and August in each year; the interest on eight hundred and sixty of the said bonds, numbered consecutively from 1821 to 2680, inclusively, is payable on the first days of March and September in each year; the interest on eight hundred and sixty of the said bonds, numbered consecutively from 2681 to 3540, inclusively, is payable on the first days of April and October in each year; the interest on eight hundred and sixty of the said bonds, numbered consecutively from 3541 to 4400, inclusively, is payable on the first days of May and November in each year; and the interest on eight hundred and sixty of the said bonds, numbered consecutively from 4401 to 5260, inclusively, is payable on the first days of June and December in each year; all of which fifty-two hundred and sixty bonds are of like tenor, except as to the days on which the interest is payable, and except that the four hundred of the said bonds numbered consecutively from 1 to 400, inclusively,
122 have, in case of a sale of the mortgaged property, a preference in the application of the proceeds thereof, as hereinafter provided; and all of which fifty-two hundred and sixty bonds are in the form following:

"No. .] UNITED STATES OF AMERICA. [$

"STATES OF PENNSYLVANIA, OHIO, INDIANA, AND ILLINOIS.

"*Pittsburgh, Fort Wayne and Chicago Railway Company.*

"SECOND-MORTGAGE BOND.

"Know all men by these presents that the Pittsburgh, Fort Wayne and Chicago Railway Company are indebted to John Ferguson and Samuel J. Tilden, of the city of New York, or bearer, in the sum of dollars, lawful money of the United States of America, which the said company promise to pay to the said John Ferguson and Samuel J. Tilden, or to the bearer hereof, on the first day of July, in the year one thousand nine hundred and twelve, at the office or agency of the said company in the city of New York, with interest thereon, after the first day of April, 1862, at the rate of seven per cent. per annum, payable semi-annually, at the said office or agency in the city of New York, on the first days of and in each year, on the presentation and surrender of the annexed coupons as they severally become due; and in case of the non-payment of any half-yearly installment of interest which shall have become payable, and shall have been demanded, if such default shall continue for three months after the maturity of the said installment, the principal of this bond shall become due in the manner and with the effect provided in the deed of trust hereinafter mentioned. But it is hereby provided, that at any time after the first day of July, one thousand eight hundred and sixty-seven, the said company, on any day on which a half-yearly installment of interest shall fall due, may, at their option, redeem at par the principal of this bond. And it is further agreed, that this

bond is convertible, at the option of the holder, upon any day upon which any such installment of interest shall become payable, into a bond to be issued and secured in the same manner as this bond, but bearing interest at the rate of six per cent. and irredeemable, except by a sinking fund of one per cent. per annum on the whole amount of the said six per cent. bonds which shall have been issued, to be reserved and applied in the manner specified in the said deed of trust.

"This bond is one of series of an issue composed of series G, (consisting of seven hundred and sixty bonds for one thousand dollars each, and two hundred bonds for five hundred dollars each,) and of series H, I, K, L, and M, (consisting severally of eight hun-
123 dred and sixty bonds for one thousand dollars each,) which issue of five thousand two hundred and sixty bonds are numbered from one to five thousand two hundred and sixty, inclusively, and amount in the aggregate to five millions one hundred and sixty thousand dollars; all which bonds bear date on the first day of March, 1862, and are of like tenor, except that the coupons of the six several series mature on the first days of the six successive months of each half year; and that the four hundred bonds of series G, numbered from one to four hundred, inclusively, have, in case of a sale of the mortgaged property, a preference in the application of the proceeds thereof; the payment of all of which bonds is secured by a deed of trust, dated the first day of March, 1862, duly executed and delivered by James F. D. Lanier, Samuel J. Tilden, Louis H. Meyer, J. Edgar Thomson, and Samuel Hanna, to John Ferguson and Samuel J. Tilden, trustees, and conveying the Pittsburgh, Fort Wayne and Chicago Railway, and the equipments, appurtenances, and things therein described, subject to the prior lien thereon created by a deed of trust between the same parties, and bearing the same date, given to secure $5,250,000 of first-mortgage bonds of the said company.

"And this bond is also entitled to the benefits of the sinking fund by the said deed of trust provided.

"The person appearing on the voting bond register of the said company as the holder of this bond, at the time of any meeting of the stockholders of the said company, will be entitled to one vote at such meeting for every two hundred dollars of the par amount hereof. The right to vote upon this bond is transferable on the written order of the person last registered as its holder, or on the production of the bond by the holder.

"It is agreed between the said company and the holder of this bond that no recourse shall be had for its payment to the individual liability of any stockholder of the said company; and that, in case of any default in the payment hereof, the said company hereby waives the benefit of any extension, stay, or appraisement laws now existing, or that may hereafter exist.

"This bond shall pass by delivery, or by transfer on the books of the company, in the city of New York. After a registration of ownership, certified hereon by the transfer agent of the company, no transfer, except on the books of the company, shall be valid, unless the last transfer be to bearer, which shall restore transferability by delivery. But this bond shall continue subject to successive registrations, and transfers to bearer as aforesaid, at the option of each holder.

"This bond shall not become obligatory until it shall have been
124 authenticated by a certificate, endorsed hereon, and duly signed by the trustees.

"In witness whereof the said company have caused their corporate

seal to be hereto affixed, and the same to be attested by the signatures of their president and secretary; and have also caused the coupons hereto annexed to be signed by their secretary, on this first day of March, in the year one thousand eight hundred and sixty-two.

"GEO. W. CASS, *President.*

{ SEAL RAILWAY COMPANY. } "W. H. BARNES, *Secretary.*"

And whereas provision is herein made for the issue of bonds, bearing interest at the rate of six per centum per annum, but irredeemable, except by a special sinking fund herein established, into which the bonds hereinbefore described may be converted, at the option of the respective holders thereof, in the manner and on the conditions herein prescribed.

And whereas the intention of these presents is, and is hereby declared to be, that all of the said bonds, whether of the original seven per cent. issue, or of the subsequent six per cent. issue, for the purpose of conversion as aforesaid, shall be equally secured by these presents in proportion to the amount of the principal thereof unpaid, with the interest on the said principal accrued and unpaid, without discrimination or preference with reference to the times of the actual issue of the said bonds, or of the maturing of the principal thereof, or the maturing of any interest which shall have accrued thereon, or other preference, excepting only the preference in the application of the proceeds of sale of the mortgaged property hereinafter provided, in favor of the four hundred bonds numbered from 1 to 400 inclusively:

Now, this indenture witnesseth: That the parties of the first part, in consideration of the premises, and of one dollar to them in hand paid, the receipt whereof is hereby acknowledged, and in order to secure the payment of the principal and interest of the bonds aforesaid issued or to be issued, as herein recited and provided, and every part of the said principal and interest, as the same shall become payable, according to the tenor of the said bonds, and of the coupons thereto annexed, have granted, bargained, and sold, and do, by these presents, grant, bargain, sell, convey, and transfer, unto the parties of the second part, all the right, title, and interest of them, the parties of the first part, and of any or either of the said parties, acquired by virtue of a deed bearing date the eighteenth day of February, 1862, and made to the parties hereto of the first part, by John Ferguson and Thomas E. Walker, both of the city and State of New York, trustees and special master
125 commissioners, in pursuance of decrees of the circuit courts of the United States, for the northern district of Ohio, the western district of Pennsylvania, the district of Indiana, and the northern district of Illinois, in causes in chancery, in the said courts then depending, wherein Charles Moran and others were complainants, and the Pittsburgh, Fort Wayne and Chicago Railroad Company and others were defendants, or acquired by virtue of a deed bearing date the twenty-sixth day of February, 1862, made to the parties hereto of the first part by the Pittsburgh, Fort Wayne and Chicago Railroad Company, pursuant to the aforesaid decrees, of, in, and to all and singular the continuous railway, extending from its eastern terminus in Pittsburgh, in the State of Pennsylvania, to Chicago, in the State of Illinois, and commonly known as the Pittsburgh, Fort Wayne and Chicago Railroad or Railway, including all the railways, ways, and rights of way, depot grounds, and other lands; all tracts, bridges, viaducts, culverts, fences, and other structures; all depots, station-houses, engine-

houses, car-houses, freight-houses, wood-houses, and other buildings; and all machine shops, and other shops, held or acquired for use in connection with the said railway, or the business thereof; and including, also, all locomotives, tenders, cars, and other rolling stock or equipment, and all machinery, tools, implements, fuel, and materials for the constructing, operating, repairing, or replacing the said railway, or any part thereof, or any of its equipments or appurtenances; and also, all franchises connected with or relating to the said railway, or the construction, maintenance, or use thereof; and all the property, franchises, rights, and things, of whatever name or nature, which were conveyed by the aforesaid deeds of the said trustees and master commissioners, and of the said company, to the parties of the first part hereto; subject, nevertheless, to a certain deed of trust or mortgage, bearing even date herewith, made by the parties of the first part to the parties of the second part hereto for the purpose of securing the payment of bonds of the Pittsburgh, Fort Wayne and Chicago Railway Company, known as first-mortgage bonds, amounting in the aggregate to five millions and two hundred and fifty thousand dollars; and also subject as to so much of the said railroad lying between the Federal-street station, in Allegheny City, in the State of Pennsylvania, and the passenger depot of the Pennsylvania Railroad, on Liberty street, in Pittsburgh City, in said State, and of the other property connected therewith, as is embraced within a certain mortgage made by the Ohio and Pennsylvania Railroad Company to Thomas T. Firth, of the city of Philadelphia, and Reuben Miller, jr., of the city of Pittsburgh, bearing date May
126 6th, 1856, to the lien created by the said mortgage; and subject, also, as to the rights of way, depot grounds, lots, and premises in the city and vicinity of Chicago, purchased during the pendency of the said causes, in which Charles Moran and others are complainants, and the said Pittsburgh, Fort Wayne and Chicago Railroad Company and others are defendants, as aforesaid, by the agency of the receiver in the said causes, to the lien of the vendors for the purchase-money of the same; and subject, also, as to any real estate included in the aforesaid sale by the said trustees and master commissioners, to the lien, if any such exists, of any vendor or former owner of said real estate, not otherwise provided to be paid by the decrees or orders in the said causes: Provided, nevertheless, and it is the true intent and meaning of these presents, that nothing herein contained shall be construed to express or imply any covenant by the parties of the first part, or either of them; but that this instrument shall operate to convey, in behalf of the said parties, all the estates and interests in the railway and appurtenances, property, rights, franchises, and things hereinbefore described, which the said parties, or either of them, might hold by virtue of the aforesaid conveyances, and which the said parties, each for himself, and not one for the other, can lawfully convey and no more; and that the said estates and interests are hereby charged with, and shall pass, by virtue of these presents, subject to the payment of all liabilities incurred in respect to the said railway, or its business, by the said parties of the first part, during their possession of the said railway, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversions, remainders, tolls, incomes, rents, issues, and profits thereof; and also, all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, and to the same, and any and every part thereof, with the appurtenances: To have and to hold the above-described premi-

ses and appurtenances, subject as aforesaid unto the said parties of the second part, as joint tenants, and not as tenants in common, and the survivor of them, and to the heirs and assigns of such survivor to the only proper use and behoof of the said parties of the second part, and of the survivor of them, and of the heirs and assigns of such survivor; in trust, nevertheless, for the purpose herein expressed, to wit:

ARTICLE 1. Until default shall be made in the payment of principal or interest of the said bonds or of some of them, or until default shall be made in respect to some thing herein required to be done or kept by the Pittsburgh, Fort Wayne and Chicago Railway Company,
127 the said Pittsburgh, Fort Wayne and Chicago Railway Company shall be suffered and permitted to possess, manage, operate, and enjoy the said railway from Pittsburgh to Chicago, with its equipments and appurtenances, and to take and use the rents, incomes, profits, tolls, and issues thereof, in the same manner and with the same effect as if this deed had not been made.

ARTICLE 2. In case default shall be made in the payment of any interest on any of the aforesaid bonds issued or to be issued according to the tenor of the coupons thereto annexed, or in any payment required to be made into the special sinking fund herein provided, or in any requirement to be done or kept by the Pittsburgh, Fort Wayne and Chicago Railway Company; and if such default shall continue for the period of three months it shall be lawful for the said trustees, or the survivor of them, or their or his successors, personally or by their or his attorneys or agents, to enter into and upon all and singular the premises hereby conveyed or intended so to be, and each and every part thereof; and to have, hold, and use the same, operating by their or his superintendents, managers, receivers, or servants, or other attorneys or agents, the said railway, and conducting the business thereof, and making from time to time all repairs and replacements, and such useful alterations, additions, and improvements thereto as may seem to them or him to be judicious; and to collect and receive all tolls, freights, incomes, rents, issues, and profits of the same and of every part thereof; and after deducting the expenses of operating the said railway and conducting its business, and of all the said repairs, replacements, alterations, additions, and improvements, and all payments which may be made for taxes, assessments, charges, or liens prior to the lien of these presents upon the said premises or any part thereof, as well as a just compensation for their or his own services, to apply the moneys arising as aforesaid to the payment of interest in the order in which such interest shall have become, or shall become due rateably to the persons holding the coupons evidencing the right to such interest and to the payment in like order of the corresponding contributions to the special sinking fund herein established for the six per cent. bonds; and after paying all interest which shall have become due, and all the said contributions to the special sinking fund to apply the same to the satisfaction of the principal of the aforesaid bonds of the original and substituted issues which may be at that time unpaid, rateably and without discrimination or preference.

ARTICLE. 3. In case default shall be made as aforesaid, and shall continue as aforesaid, it shall likewise be lawful for the said trustees or the survivor of them, or their or his successors, after entry as
128 aforesaid or other entry or without entry, personally or by their or his attorneys or agents, to sell and dispose of all and singular the premises hereby conveyed or intended so to be, at the public auction, in the city of New York, or at such place within any of the States in which any part of the said railway is situate which the said trustees

may designate, and at such time as they may appoint, having first given notice of the place and time of such sale by advertisement published not less than three times a week for six weeks in one or more newspapers in the cities of New York, Pittsburgh, Chicago, and in Crestline and Fort Wayne, or some other places in the judicial districts of the United States in which Crestline and Fort Wayne are situated; or to adjourn the said sale from time to time in their or his discretion, and, if so adjourning, to make the same at the time and place to which the same may be so adjourned; and to make and deliver to the purchaser or purchasers thereof good and sufficient deed or deeds in the law for the same in fee-simple; which sale, made as aforesaid, shall be a perpetual bar, both in law and equity, against the parties of the first part and all other persons lawfully claiming or to claim the said premises, or any part thereof by, from, through, or under them, or any or either of them; and after deducting from the proceeds of such sale just allowances for all expenses of the said sale including attorneys' and counsel fees, and all other expenses, advances, or liabilities which may have been made or incurred by the said trustees in operating or maintaining the said railway, or in managing its business while in possession, and all payments which may have been made by them for taxes or assessments, and for charges and liens prior to the lien of these presents on the said premises or any part thereof as well as compensation for their own services to apply the proceeds in the manner following:

First. To the payment of the principal of the aforesaid bonds of the original seven per cent. issue, numbered from one to four hundred, inclusively, and such bonds of the six per cent. issue as may have been substituted for bonds numbered as aforesaid, as may be at that time unpaid, whether or not the same shall have previously become due without discrimination or preference, but rateably to the aggregate amount thereof.

Secondly. After paying the principal of such of the aforesaid four hundred bonds as may be at that time unpaid, to the payment of the principal of such of the aforesaid bonds numbered from four hundred and one to fifty-two hundred and sixty, inclusively, of the original issue and of the substituted issue, whether or not the same shall have previously become due, and of the interest which shall at that
129 time have accrued on the principal of all the bonds secured hereby and be unpaid, without discrimination or preference, but rateably to the aggregate amount of such unpaid principal and accrued and unpaid interest:

And if, after satisfaction thereof, a surplus of the said proceeds shall remain, to apply such surplus according to the provisions of a deed of trust bearing even date herewith, and made by the parties of the first part to the parties of the second part hereto, subject to these presents, and to the lien prior to these presents, to secure two millions of dollars of mortgage bonds known as income or third-mortgage bonds of the said company, so far as the trusts thereof shall be then unfulfilled, or to pay over so much of such surplus as may be necessary for that purpose to the trustees then acting under the said deed; and if, after so doing, a surplus shall still remain, to pay over the same to the said Pittsburgh, Fort Wayne and Chicago Railway Company, or to such other parties as may be entitled to receive the same.

And it is hereby declared that the receipt or receipts of the said trustees shall be a sufficient discharge to the purchaser or purchasers of the premises, for his or their purchase-money; and that such purchaser or purchasers, his or their heirs, executors, or administrators, shall not,

after payment thereof, and having such receipt, be liable to see to its being applied upon or for the trusts and purposes of these presents, or in any manner whatsoever be answerable for any loss, misapplication, or non-application of such purchase-money, or any part thereof, or be obliged to inquire into the necessity, expediency, or authority of or for any such sale.

ARTICLE 4. At any sale of the aforesaid property or any part thereof, whether made by virtue of the power herein granted, or by judicial authority, the trustees shall bid for and purchase, or cause to be bid for and purchased, the property so sold, or any part thereof, in behalf of all the holders of the bonds secured by this instrument and then outstanding, in the proportion of the respective interests of such bondholders, at a reasonable price, if but a portion of the said property shall be sold, or, if all of it be sold, at a price not exceeding the whole amount of such bonds outstanding, with the interest accrued thereon.

ARTICLE 5. In case default shall be made in the payment of any half-year's interest on any of the aforesaid bonds, whether of the original or substituted issues, at the time and in the manner in the coupon issued therewith provided, the said coupon having been presented, and the payment of the interest therein specified having been demanded, and that such default shall continue for the period of three months after the said coupon shall have become due; or in case default
130 shall be made in the payment to the trustees of any part of any semi-annual installment of the one per cent. per annum for the special sinking fund herein provided for the redemption of the substituted issue of six per cent. bonds, and such default shall continue for the period of three months after the said payment shall have become due, then, and in either of such cases, the principal of all the bonds secured hereby, whether of the original or substituted issues, shall, at the election of the trustees, become immediately due and payable, anything contained in the said bonds or herein to the contrary notwithstanding; but a majority in interest of the holders of the said bonds may, in writing, or by a vote of a meeting duly held, instruct the trustees to declare the said principal to be due, or to waive the right so to declare, on such terms and conditions as such majority shall deem proper; or may annul or reverse the election of the trustees; provided that no action of the trustees or bondholders shall extend to or be taken to affect any subsequent default, or to impair the rights resulting therefrom.

ARTICLE 6. In any six months, the first such period commencing on the first day of January, 1862, in which the net earnings of the said railway shall exceed the amount necessary to pay the interest upon all the bonds of the said company secured by these presents, or by either of the two several trust deeds bearing even dates herewith and then outstanding—including the contribution to the special sinking fund for the six per cent. bonds herein and in the said first mortgage provided, and a dividend of three per cent. upon six millions and five hundred thousand dollars of the capital stock—such surplus shall be reserved, and shall, within sixty days after the expiration of the said six months, be paid over to the trustees, under the trust deed known as the first mortgage, as a sinking fund for the redemption of the bonds secured by the said trust deed, and by these presents, and by a trust deed herein mentioned creating a subsequent lien, to be applied in the manner in the said first mortgage provided: Provided, That after the redemption of bonds amounting in the aggregate to two millions and five hundred thousand dollars, the said sinking fund may be limited to the application of not less than one per cent. per annum upon the aggregate of

bonds outstanding at the time of such limitation; and the said sinking fund may at any time hereafter be varied in its amount; and the said surplus, or any part thereof may, as the same shall from time to time arise, be applied to the improvement of the said railway, its equipments and appurtenances, in the manner in the said first mortgage provided.

ARTICLE 7. The Pittsburgh, Fort Wayne and Chicago Railway Company shall, from time to time, prepare such bonds as may be necessary for the purposes of the exchange herein provided; which
131 bonds shall, in their form, be identical with those originally issued in pursuance of these presents, except that their principal shall be irredeemable otherwise than by the operation of the special sinking fund herein provided; that they shall bear interest at the rate of six per centum per annum, and that they shall be entitled to the benefit of the said special sinking fund, in addition to that herein provided, from the surplus earnings of the said railway; which special sinking fund shall consist of one per cent. per annum upon the aggregate amount of six per cent. bonds issued in substitution for the seven per cent. bonds hereby secured, from the days when the last preceding coupon, at the rate of seven per cent., matured; which one per cent. shall be paid to the trustees in semi-annual installments of one half of one per cent., upon the days on which the semi-annual installments of six per cent. interest shall be payable. The holder of any seven per cent. bond of the original issue secured by these presents, shall be entitled, after the first day of July, 1867, to convert such bond into a six per cent. bond of the issue herein provided, by notifying, in writing, the company, on any day on which any semi-annual installment of interest on the said bonds shall be payable, of his desire to convert the said bond; and on depositing the said bond with the said company for conversion, it shall be the duty of the company, within a reasonable period to duly execute a six per cent. bond for exchange and of the trustees for the time being, to countersign and deliver to the company such six per cent. bond, upon the cancellation of the seven per cent, bond; which cancellation shall be made in such manner as the trustees may direct, and shall be recorded by the company. Conversions may be made on such other notice as may be satisfactory to the company and the trustees; but such conversions shall in all cases be as of the date of the maturity of the last preceding coupon of the bonds so converted. The moneys coming into this special sinking fund for the redemption of the six per cent. bonds shall be deposited in some safe depository in the city of New York; and as often as the moneys in the sinking fund, derived from the conversion of bonds made on or as of any particular date, shall amount to a sum sufficient to redeem one or more such bonds, the said moneys shall, without unreasonable delay, be applied to the redemption of bonds converted at or as of the said date, as follows:

The trustees shall designate by lot so many of the bonds as they have money to pay; and shall give notice of the numbers designated, personally, to any owner or holder of the bonds known to them, and by advertisement in one or more daily newspapers in the city of New
132 York once a week, until the date of the next interest payment, if any owner or holder of the said bonds is unknown to them; and, on presentation and delivery of the said bonds, shall apply the money so received by them to the payment thereof. And all future interest on any of the said bonds, not presented and delivered on or before the date of the said next interest payment, shall cease from and after such date, and the company shall be no longer liable for the said interest. The

trustees shall, without unreasonable delay, cancel the bonds so redeemed by them, and return such bonds to the company; and the trustees and the company shall keep separate registries of all the bonds so redeemed or designated for redemption; and the registry of the company shall be at all reasonable times open to the inspection of each of the bondholders and stockholders of the company; and the numbers and amounts of the bonds so redeemed or designated for redemption shall be reported by the company in each annual statement made to the stockholders, and the canceled bonds shall, on the request of the meeting of the stockholders, be produced and exhibited.

ARTICLE 8. The aggregate amount of the capital stock of the said Pittsburgh, Fort Wayne and Chicago Railway Company, outstanding at any one time, shall never exceed, in par value, six millions and five hundred thousand dollars, unless the holders of bonds secured by these presents shall have, by a vote at a meeting duly held, expressly consented to such increase.

ARTICLE 9. The Pittsburgh, Fort Wayne and Chicago Railway Company shall, from time to time, and at all times hereafter, and as often as thereunto requested by the trustees, execute, deliver, and acknowledge all such further deeds, conveyances, and assurances in the law for the better assuring unto the trustees and their successors in the trust hereby created upon the trusts herein expressed, the railway, equipments, and appurtenances hereinbefore mentioned or intended so to be, and all other property and things whatsoever which may be hereafter acquired for use in connection with the same or any part thereof, and all franchises now held or hereafter acquired, including the franchise to be a corporation, as by the trustees or the survivor of them, or their successors, or by their or his counsel learned in the law, shall be reasonably advised, devised, or required.

ARTICLE 10. The trustees shall have full power, in their discretion, and upon the written request of the Pittsburgh, Fort Wayne and Chicago Railway Company, to convey, by way of release or otherwise, to the persons designated by the said company, the whole or any part of the lands situate in the city of Chicago, and State of Illinois, and heretofore occupied by or purchased for the use of the Pittsburgh, Fort Wayne and Chicago Railroad Company; and, in order to substitute other lands, or to allow or aid the erection thereon of warehouses or other buildings to be used in connection with the business of the said railway, or to otherwise facilitate the said business, shall have like power to convey, as aforesaid, any lands acquired or held for the purposes of stations, depots, shops, or other buildings, or the uses connected therewith; and shall also have power to convey as aforesaid any lands or property which, in the judgment of the trustees, shall not be necessary for use in connection with the said Pittsburgh, Fort Wayne and Chicago Railway, or which may have been held for a supply of fuel, gravel, or other material; and also to convey as aforesaid any lands which may become disused by reason of a change of the location of any station-house, depot, shop, or other building connected with the said railway, and such lands occupied by the track and adjacent to such station-house, depot, shop, or other building, as the said company may deem it expedient to disuse or abandon by reason of such change; and to consent to any such change and to such other changes in the location of the track as in their judgment shall have become expedient, and to make and deliver the conveyances necessary to carry the same into effect; but any lands which may be acquired for permanent use in sub-

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stitution for any so released shall be conveyed to the trustees upon the trusts of these presents; and the trustees shall also have full power to allow the said company, from time to time, to dispose of, according to their discretion, such portions of the equipments, machinery, and implements at any time held or acquired for the use of the said railway as may have become unfit for such use, replacing the same by new, which shall be conveyed to the trustees, or be otherwise made subject to the operations of these presents.

ARTICLE 11. If the said Pittsburgh, Fort Wayne and Chicago Railway Company shall well and truly pay the sums of money herein required to be paid by the said company, and all interest thereon, at the times and in the manner herein specified, and shall well and truly keep and perform all the things herein required to be kept and performed by the said company, according to the true intent and meaning of these presents, then, and in that case, the estate, right, title, and interest of the said parties of the second part, and of their successors in the trust hereby created, shall cease, determine, and become void; otherwise the same shall be and remain in full force and virtue.

ARTICLE 12. The said Pittsburgh, Fort Wayne and Chicago Railway Company shall at all times hereafter keep a book at their office or agency in the city of New York, which shall be designated as the voting
134 register of the second-mortgage bondholders, and shall be distinct from the transfer-register of the bonds. Any holder of any of the said bonds shall be entitled to have his name and address, and the denomination and the number of every of the said bonds held by him, entered in such registry on presenting at the aforesaid office or agency a written statement of the said particulars, signed by himself, and, if required, duly verifying his title thereto, by producing the bonds, or upon filing with the company the written order of the person last registered as the holder, or in such other mode as may be prescribed by the regulations for such verification. The trustees may, in the first instance, prescribe the said regulations, subject to the power hereby declared of the bondholders, acting by a majority in interest, to adopt, alter, or repeal, from time to time, the said regulations, and generally to establish such as may seem to them expedient. Such registration shall authenticate the right of the holder of every bond so registered to vote on the said bond, as provided therein, at every general and special meeting of the stockholders of the said company, and shall also entitle the said holder to notice, in such mode and form as may be fixed by regulations prescribed or established as aforesaid, of all meetings of the second-mortgage bondholders. The trustees, and each of them, shall at all times have free access to such book or registry, and shall, from time to time, and at all times, on the request, in writing, of either of them, be furnished with a copy thereof by the said company, and shall have a right to require, at their option, that any act or resolution of the said bondholders, affecting their duties or the interest of the trust hereby created, shall be authenticated by the signatures of all the persons assenting thereto, as well as by a minute of the proceedings of the meeting. Meetings of the second-mortgage bondholders may be called by the trustees, or in such other mode as may be fixed by regulations prescribed or established as aforesaid, and the bondholders may vote thereat in person or by proxy; and the quorum may be defined, and such other regulations or by-laws, in respect to such meetings, may be from time to time established, altered, or repealed by the bondholders, acting by a majority in interest, as to them shall seem expedient; and until the

bondholders shall act, such powers may be temporarily exercised by the trustees.

ARTICLE 13. It is hereby declared and agreed that it shall be the duty of the trustees to exercise the power of entry hereby granted, or the power of sale hereby granted, or both, or to take appropriate legal proceedings to enforce the rights of the bondholders under these presents, upon the requisition, in writing, as hereinafter specified as applicable to the several cases of default, in the manner and subject to the qualifications hereinafter provided, as follows:

1. If the default be as to interest or principal of any bonds, either of the original seven per cent. issue or of the substituted six per cent. issue, provided for by these presents, or in respect to any installment of the special sinking fund hereby established for the redemption of the said six per cent. bonds, such requisition upon the said trustees shall be by holders of not less than one hundred thousand dollars in aggregate amount of the said bonds; and upon such requisition, and a proper indemnification by the persons making the same to the trustees against the costs and expenses to be by them incurred, it shall be the duty of the trustees to enforce the rights of the bondholders under these presents by entry, sale, or legal proceedings, as they, being advised by counsel learned in the law, shall deem most expedient for the interest of all the holders of the said bonds.

2. If the default be in respect to any payment into the sinking fund established by article sixth of these presents, or be in the creation or issue of capital stock by the said Pittsburgh, Fort Wayne and Chicago Railway Company, in excess of the aggregate amount fixed by article eighth of these presents, or be in the omission of any act or thing required by article ninth of these presents, for the further assuring of the title of the trustees to any property or franchises now possessed or hereafter acquired, or in the omission to comply with each and all the provisions of articles seventh and twelfth of these presents, or with any other provision herein contained to be performed or kept by the said company, then, and in either of such cases, the requisitions shall be as aforesaid; but it shall be within the discretion of the trustees to enforce or waive the rights of the bondholders by reason of such default, subject to the power hereby declared of a majority in interest of the holders of the said bonds, by requisition in writing, or by a vote at a meeting duly held to instruct the said trustees to waive such default, or to enforce their rights by reason thereof: *Provided*, That no action of the said trustees, or bondholders, or both, in waiving such default, or otherwise, shall extend to or be taken to affect any subsequent default, or to impair the rights resulting therefrom.

ARTICLE 14. It is mutually agreed by and between the parties hereto that the word "trustees," as used in these presents, shall be construed to mean the trustees for the time being, whether one or both be original or new; and, whenever a vacancy shall exist, to mean the surviving or continuing trustee, and such trustee shall, during such vacancy, be competent to exercise all the powers granted by these presents to the parties of the second part. And it is mutually agreed by and between the parties hereto, as a condition on which the parties of the second part have assented to these presents, that the said trustees shall not be in *in* any manner responsible for any default or misconduct of each other; that the said trustees shall be entitled to just compensation for all services which they may hereafter render in their trust, to be paid by the said company; that either of the said trustees, or any successor, may

resign and discharge himself of the trust created by these presents, by notice, in writing, to the Pittsburgh, Fort Wayne and Chicago Railway Company, and to the existing trustee, if there be such, three months before such resignation shall take effect, or such shorter time as they may accept as adequate notice, and upon the due execution of the conveyances hereinafter required; that the said trustees, or either of them, may be removed by the vote of a majority in interest of the holders of the aforesaid bonds, the said vote being had at a meeting duly held of the said bondholders, and attested by an instrument under the hands and seals of the persons so voting; that in case, at any time hereafter, either of the said trustees, or any trustee hereafter appointed, shall die, or resign, or be removed as herein provided or by a court of competent jurisdiction, or shall become incapable or unfit to act in the said trust, a successor to such trustee shall be appointed by the surviving or continuing trustee, with the consent of the holders, for the time being, of a majority in interest of the said bonds then outstanding, or the consent of a meeting, duly held, of the holders of the said bonds; and the trustee so appointed, with the trustee so surviving or continuing, shall thereupon become vested with all the powers, authorities, and estates granted to or conferred upon the parties of the second part by these presents, and all the rights and interests requisite to enable him to execute the purposes of this trust, without any further assurance or conveyance, so far as such effect may be lawful; but the surviving or continuing trustee shall immediately execute all such conveyances and other instruments as may be fit or expedient for the purpose of assuring the legal estate in the premises, jointly with himself, to the trustee so appointed; and upon the death, resignation, or removal of any trustee, or any appointment in his place in pursuance of these presents, all his powers and authorities by virtue hereof shall cease; and all the estate, right, title, and interest in the said premises, of any trustee so dying, resigning, or being removed, shall, if there be a co-trustee surviving or continuing in office, wholly cease and determine; but the said trustee, so resigning or being removed, shall, on the written request of the new trustee who
137 may be appointed, immediately execute a deed or deeds of conveyance to vest in such new trustee, jointly with the continuing trustee, and upon the trusts herein expressed, all the property, rights, and franchises which may be at that time held upon the said trust: Provided, nevertheless, that it is hereby agreed and declared that for the first vacancy in the trust hereby created which may happen as hereinbefore provided, in respect to either of the parties of the second part hereto, Charles Lanier, of the city and State of New York, is hereby designated and appointed to fill such vacancy, with the same effect as if he had been appointed in the manner hereinbefore specified; and in case it shall at any time hereafter prove impracticable, after reasonable exertions, to appoint in the manner hereinbefore provided, a successor in any vacancy which may have happened in said trust, or in case the trust shall become wholly vacant, application, in behalf of all the holders of the bonds secured hereby, may be made by the surviving or continuing trustee; or, if the trust be wholly vacant, by holders of the said bonds to the aggregate amount of one hundred thousand dollars, to any circuit court of the United States for any judicial district in which any part of the aforesaid railway may be situate, for the appointment of a new trustee or new trustees.

In witness whereof the parties of the first part have hereunto set their respective hands and seals, and the parties of the second part have also set their respective hands and seals, for the purpose of evidencing

bondholders shall act, such powers may be temporarily exercised by the trustees.

ARTICLE 13. It is hereby declared and agreed that it shall be the duty of the trustees to exercise the power of entry hereby granted, or the power of sale hereby granted, or both, or to take appropriate legal proceedings to enforce the rights of the bondholders under these presents, upon the requisition, in writing, as hereinafter specified as applicable to the several cases of default, in the manner and subject to the qualifications hereinafter provided, as follows:

1. If the default be as to interest or principal of any bonds, either of the original seven per cent. issue or of the substituted six per cent. issue, provided for by these presents, or in respect to any installment of the special sinking fund hereby established for the redemption of the said six per cent. bonds, such requisition upon the said trustees shall be by holders of not less than one hundred thousand dollars in aggregate amount of the said bonds; and upon such requisition, and a proper indemnification by the persons making the same to the trustees against the costs and expenses to be by them incurred, it shall be the duty of the trustees to enforce the rights of the bondholders under these presents by entry, sale, or legal proceedings, as they, being advised by counsel learned in the law, shall deem most expedient for the interest of all the holders of the said bonds.

2. If the default be in respect to any payment into the sinking fund established by article sixth of these presents, or be in the creation or issue of capital stock by the said Pittsburgh, Fort Wayne and Chicago Railway Company, in excess of the aggregate amount fixed by article eighth of these presents, or be in the omission of any act or thing required by article ninth of these presents, for the further assuring of the title of the trustees to any property or franchises now possessed or hereafter acquired, or in the omission to comply with each and all the provisions of articles seventh and twelfth of these presents, or with any other provision herein contained to be performed or kept by the said company, then, and in either of such cases, the requisitions shall be as aforesaid; but it shall be within the discretion of the trustees to enforce or waive the rights of the bondholders by reason of such default, subject to the power hereby declared of a majority in interest of the holders of the said bonds, by requisition in writing, or by a vote at a meeting duly held to instruct the said trustees to waive such default, or to enforce their rights by reason thereof: *Provided*, That no action of the said trustees, or bondholders, or both, in waiving such default, or otherwise, shall extend to or be taken to affect any subsequent default, or to impair the rights resulting therefrom.

ARTICLE 14. It is mutually agreed by and between the parties hereto that the word "trustees," as used in these presents, shall be construed to mean the trustees for the time being, whether one or both be original or new; and, whenever a vacancy shall exist, to mean the surviving or continuing trustee, and such trustee shall, during such vacancy, be competent to exercise all the powers granted by these presents to the parties of the second part. And it is mutually agreed by and between the parties hereto, as a condition on which the parties of the second part have assented to these presents, that the said trustees shall not be in *in* any manner responsible for any default or misconduct of each other; that the said trustees shall be entitled to just compensation for all services which they may hereafter render in their trust, to be paid by the said company; that either of the said trustees, or any successor, may

resign and discharge himself of the trust created by these presents, by notice, in writing, to the Pittsburgh, Fort Wayne and Chicago Railway Company, and to the existing trustee, if there be such, three months before such resignation shall take effect, or such shorter time as they may accept as adequate notice, and upon the due execution of the conveyances hereinafter required; that the said trustees, or either of them, may be removed by the vote of a majority in interest of the holders of the aforesaid bonds, the said vote being had at a meeting duly held of the said bondholders, and attested by an instrument under the hands and seals of the persons so voting; that in case, at any time hereafter, either of the said trustees, or any trustee hereafter appointed, shall die, or resign, or be removed as herein provided or by a court of competent jurisdiction, or shall become incapable or unfit to act in the said trust, a successor to such trustee shall be appointed by the surviving or continuing trustee, with the consent of the holders, for the time being, of a majority in interest of the said bonds then outstanding, or the consent of a meeting, duly held, of the holders of the said bonds; and the trustee so appointed, with the trustee so surviving or continuing, shall thereupon become vested with all the powers, authorities, and estates granted to or conferred upon the parties of the second part by these presents, and all the rights and interests requisite to enable him to execute the purposes of this trust, without any further assurance or conveyance, so far as such effect may be lawful; but the surviving or continuing trustee shall immediately execute all such conveyances and other instruments as may be fit or expedient for the purpose of assuring the legal estate in the premises, jointly with himself, to the trustee so appointed; and upon the death, resignation, or removal of any trustee, or any appointment in his place in pursuance of these presents, all his powers and authorities by virtue hereof shall cease; and all the estate, right, title, and interest in the said premises, of any trustee so dying, resigning, or being removed, shall, if there be a co-trustee surviving or continuing in office, wholly cease and determine; but the said trustee, so resigning or being removed, shall, on the written request of the new trustee who
137 may be appointed, immediately execute a deed or deeds of conveyance to vest in such new trustee, jointly with the continuing trustee, and upon the trusts herein expressed, all the property, rights, and franchises which may be at that time held upon the said trust: Provided, nevertheless, that it is hereby agreed and declared that for the first vacancy in the trust hereby created which may happen as hereinbefore provided, in respect to either of the parties of the second part hereto, Charles Lanier, of the city and State of New York, is hereby designated and appointed to fill such vacancy, with the same effect as if he had been appointed in the manner hereinbefore specified; and in case it shall at any time hereafter prove impracticable, after reasonable exertions, to appoint in the manner hereinbefore provided, a successor in any vacancy which may have happened in said trust, or in case the trust shall become wholly vacant, application, in behalf of all the holders of the bonds secured hereby, may be made by the surviving or continuing trustee; or, if the trust be wholly vacant, by holders of the said bonds to the aggregate amount of one hundred thousand dollars, to any circuit court of the United States for any judicial district in which any part of the aforesaid railway may be situate, for the appointment of a new trustee or new trustees.

In witness whereof the parties of the first part have hereunto set their respective hands and seals, and the parties of the second part have also set their respective hands and seals, for the purpose of evidencing

their acceptance of the trust hereby created, on the day and year first above written.

JAMES F. D. LANIER.	[L. S.]
SAMUEL J. TILDEN.	[L. S.]
LOUIS H. MEYER.	[L. S.]
J. EDGAR THOMSON.	[L. S.]
SAMUEL HANNA.	[L. S.]
JOHN FERGUSON.	[L. S.]
SAMUEL J. TILDEN.	[L. S.]

Signed, sealed, and delivered in presence of—
JAMES P. SINNOTT and JOHN L. DRUMMOND.

138 Third-mortgage trust deed of same date, (March 1, 1862,) recites other bonds which it is given to secure—same provision as to sale, as follows:

F. M. Hutchinson, s'r, No. 3.

(D.)

Third-mortgage trust deed.

This indenture, made this first day of March, in the year of our Lord one thousand eight hundred and sixty-two, between James F. D. Lanier, Samuel, J. Tilden, and Louis H. Meyer, of the city and State of New York; J. Edgar Thomson, of the city of Philadelphia, and State of Pennsylvania; and Samuel Hanna, of the town of Fort Wayne, and State of Indiana, of the first part, and John Ferguson and Samuel J. Tilden, of the city and State of New York, of the second part, witnesseth:

Whereas The Pittsburgh, Fort Wayne and Chicago Railway Company is vested with franchises to be a corporation, granted to the said company by the States of Pennsylvania, Illinois, and Indiana, respectively, and has become duly organized as a corporation in conformity to the provisions of the said grants, with capacity, in its corporate character, to take, hold, and exercise other franchises, and particularly with capacity to acquire, hold, maintain, and operate the continuous railway extending from Pittsburgh, in the State of Pennsylvania, to Chicago, in the State of Illinois, commonly known as the Pittsburgh, Fort Wayne and Chicago Railroad, together with its equipments and appurtenances:

And whereas the said company has agreed with the parties of the first part to buy the aforesaid railway, and, in evidence of a portion of the consideration for the same, has made and delivered to the parties of the first part its bonds, amounting in the aggregate to the sum of two millions of dollars, all of which bonds bear date on the first day of March, in the year one thousand eight hundred and sixty-two, and are payable at the office or agency of the said company in the city of New York, at the pleasure of the said company, after the first day of July, in the year one thousand nine hundred and twelve; and all of which bonds bear interest at such rate, not exceeding seven per centum per annum, as the net earnings hereinafter defined of the said railway in each calendar year may suffice to pay, after satisfying the interest on the first and second mortgage bonds of the said company; such interest for each calendar year upon the said bonds being payable at the office or agency of the said company in the city of New York, on the first day of April, after the termination of such year; of which said bonds fifteen

hundred, numbered consecutively from 1 to 1500, inclusively, are each for one thousand dollars; and one thousand, numbered consecutively from 1501 to 2500, inclusively, are each for five hundred dollars; and all of which bonds are in the form following:

139 No. UNITED STATES OF AMERICA. $

STATES OF PENNSYLVANIA, OHIO, INDIANA, AND ILLINOIS.

Pittsburgh, Fort Wayne and Chicago Railway Company.

INCOME BOND.

Know all men by these presents that the Pittsburgh, Fort Wayne and Chicago Railway Company will pay to John Ferguson and Samuel J. Tilden, or assigns, dollars, lawful money of the United States of America, at the pleasure of the said company, after the first day of July, 1912, at the office or agency of said company in the city of New York, with interest thereon after the first day of April, 1862, at such rate, not exceeding seven per cent. per annum, as the net earnings of the said railway in each calendar year may suffice to pay on the entire issue, of which this bond is a part, after satisfying the interest upon the first and second mortgage bonds of the said company; such interest on this bond for each year ending on each 31st day of December being payable at the office or agency of the said company in the city of New York, on the first day of April after the termination of the said year.

This bond is one of an issue composed of a series of fifteen hundred bonds for one thousand dollars each, numbered from 1 to 1500, inclusively, and a series of one thousand bonds for five hundred dollars each, numbering from 1501 to 2500, inclusively, and amounting in the aggregate to two millions of dollars, all bearing date on the first day of March, 1862, and the payment of which is secured by a deed of trust dated the first day of March, 1862, duly executed and delivered by James F. D. Lanier, Samuel J. Tilden, Louis H. Meyer, J. Edgar Thomson, and Samuel Hanna to John Ferguson and Samuel J. Tilden, trustees, and conveying the Pittsburgh, Fort Wayne and Chicago Railway, and the equipments, appurtenances, and things therein described, subject to the prior liens thereon created by two deeds of trust between the same parties, and bearing the same date, one given to secure $5,250,000 first-mortgage bonds of the said company, and the other given to secure $5,160,000 of second-mortgage bonds of said company.

This bond is also entitled to the benefits of the sinking fund by the said deed of trust provided.

The person appearing on the register of the said company as the holder of this bond at the time of any meeting of the stockholders of the said company will be entitled to one vote, in person or by proxy, at such meeting, for every one hundred dollars of the par amount thereof.

It is agreed between the said company and the holder of this bond that no recourse shall be had for its payment to the individual
140 liability of any stockholder of the said company, or to any liability of the said company, except for the application of the net earnings of the said railway as defined and provided in the deed of trust by which this bond is secured; and that, in case of any default in respect to the payment hereof the said company hereby waives the benefit of any extension, stay, or appraisement laws now existing, or that

may hereafter exist. This bond shall pass by transfer on the books of the company in the city of New York, authenticated by the transfer agent of the company.

This bond shall not become obligatory until it shall have been authenticated by a certificate endorsed hereon and duly signed by the trustees.

In witness whereof the said company have caused their corporate seal to be hereto affixed, and the same to be attested by the signatures of their president and secretary, on this first day of March, in the year one thousand eight hundred and sixty-two.

{ SEAL RAILWAY COMPANY. } G. W. CASS, *President.*
{ W. H. BARNES, *Secretary.*

And whereas the intention of these presents is, and is hereby declared to be, that all of the said bonds shall be equally secured by these presents, in proportion to the amount of the principal thereof unpaid, with the interest on the said principal accrued and unpaid, without discrimination or preference with respect to the times of the actual issue of the said bonds or the maturing of any interest which shall have accrued thereon:

Now this indenture witnesseth: That the parties of the first part, in consideration of the premises, and of one dollar to them in hand paid, the receipt whereof is hereby acknowledged, and in order to secure the payment of the principal and interest of the bonds aforesaid, issued or to be issued, as herein recited and provided, and every part of the said principal and interest as the same shall become payable, according to the tenor of the said bonds, have granted, bargained, and sold, and do by these presents, grant, bargain, sell, convey, and transfer, unto the parties of the second part, all the right, title, and interest of them, the parties of the first part, and of any or either of the said parties, acquired by virtue of a deed bearing date the eighteenth day of February, 1862, and made to the parties hereto of the first part by John Ferguson and Thomas E. Walker, both of the city and State of New York, trustees and special master commissioners, in pursuance of decrees of the circuit courts of the United States for the northern district of Ohio, the western district of Pennsylvania, the district of Indiana, and the northern district of Illinois, in causes in chancery, in the said courts then
141 depending, wherein Charles Moran and others were complainants, and the Pittsburgh, Fort Wayne and Chicago Railroad Company and others were defendants, or acquired by virtue of a deed bearing date the twenty-sixth day of February, 1862, made to the parties hereto of the first part by the Pittsburgh, Fort Wayne and Chicago Railroad Company, pursuant to the aforesaid decrees, of, in, and to, all and singular, the continuous railway, extending from its eastern terminus in Pittsburgh, in the State of Pennsylvania, to Chicago, in the State of Illinois, and commonly known as the Pittsburgh, Fort Wayne and Chicago Railroad or Railway; including all the railways, ways, and rights of way, depot grounds, and other lands; all tracks, bridges, viaducts, culverts, fences, and other structures; all depots, station-houses, engine-houses, car-houses, freight-houses, wood-houses, and other buildings; and all machine-shops and other shops, held or acquired for use in connection with the said railway or the business thereof; and including, also, all locomotives, tenders, cars, and other rolling stock or equipment, and all machinery, tools, implements, fuel, and materials for the constructing, operating, repairing, or replacing the said railway, or any part thereof, or any of its equipments or appurtenances; and also, all fran-

chises connected with or relating to the said railway, or the construction, maintenance, or use thereof; and also, all the property, franchises, rights, and things, of whatever name or nature, which were conveyed by the aforesaid deeds of the said trustees and master commissioners, and of the said company, to the parties of the first part hereto; subject, nevertheless, to a certain deed of trust or mortgage, bearing even date herewith, made by the parties of the first part to the parties of the second part hereto, for the purpose of securing the payment of bonds of the Pittsburgh, Fort Wayne and Chicago Railway Company, known as first-mortgage bonds, amounting in the aggregate to five millions and two hundred and fifty thousand dollars; and subject, also, to a certain other deed of trust or mortgage, bearing even date herewith, made by the said parties of the first part to the said parties of the second part, for the purpose of securing the payment of bonds of the said Pittsburgh, Fort Wayne and Chicago Railway Company, known as second-mortgage bonds, amounting in the aggregate to five millions and one hundred and sixty thousand dollars; and subject, also, as to so much of the said railroad lying between the Federal-street station, in Allegheny City, in the State of Pennsylvania, and the passenger depot of the Pennsylvania Railroad, on Liberty street, in Pittsburgh City, in said State, and of the other property connected therewith, as is embraced within a certain mortgage made by the Ohio and Pennsylvania Railroad Company to
142 Thomas T. Firth, of the city of Philadelphia, and Reuben Miller, jr., of the city of Pittsburgh, bearing date May 6th, 1856, to the lien created by the said mortgage; and subject, also, as to the rights of way, depot grounds, lots, and premises in the city and vicinity of Chicago, purchased during the pendency of the said causes, in which Charles Moran and others are complainants, and the said Pittsburgh, Fort Wayne and Chicago Railroad Company and others are defendants as aforesaid, by the agency of the receiver in the said causes, to the lien of the vendors for the purchase-money of the same; and subject, also, as to any real estate included in the aforesaid sale by the said trustees and master commissioners, to the lien, if any such exists, of any vendor or former owner of said real estate, not otherwise provided to be paid by the decrees or orders in the said causes: Provided, nevertheless, and it is the true intent and meaning of these presents, that nothing herein contained shall be construed to express or imply any covenant by the parties of the first part, or either of them, but that this instrument shall operate to convey, in behalf of the said parties, all the estates and interests in the railway and appurtenances, property, rights, franchises, and things hereinbefore described, which the said parties, or either of them, might hold by virtue of the aforesaid conveyances, and which the said parties, each for himself, and not one for the other, can lawfully convey, and no more; and that the said estates and interests are hereby charged with, and shall pass, by virtue of these presents, subject to the payment of all liabilities incurred in respect to the said railway or its business by the said parties of the first part during their possession of the said railway, together with all and singular the tenements, hereditaments, and appurtenances thereto belonging or in any wise appertaining, and the reversions, remainders, tolls, incomes, rents, issues, and profits thereof; and also, all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, and to the same, and any and every part thereof, with the appurtenances: To have and to hold the above-described premises and appurtenances, subject as aforesaid, unto the said parties of the second part, as joint tenants, and not as tenants in common, and the sur-

vivor of them, and to the heirs and assigns of such survivor, to the only proper use and behoof of the said parties of the second part, and of the survivor of them, and of the heirs and assigns of such survivor; in trust, nevertheless, for the purposes herein expressed, to wit:

ARTICLE 1. Until default shall be made in respect to something herein required to be done or kept by the Pittsburgh, Fort Wayne and Chicago Railway Company, the said Pittsburgh, Fort Wayne
143 and Chicago Railway Company shall be suffered and permitted to possess, manage, operate, and enjoy the said railway from Pittsburgh to Chicago, with its equipments and appurtenances, and to take and use the rents, incomes, profits, tolls, and issues thereof, in the same manner and with the same effect as if this deed had not been made.

ARTICLE 2. In case default shall be made in the application to the payment of interest upon the aforesaid bonds, at the time and in the manner in article ninth of these presents prescribed, after satisfying prior liens as therein provided, of the net earnings of the said railway for any calendar year, as such net earnings are defined in the said article ninth; and if such default shall continue for the period of twelve months, then, and in that case, upon the requisition of the bondholders secured hereby, specified in the said article ninth, it shall be lawful for the said trustees, or the survivor of them, or their or his successors, personally or by their or his attorneys or agents, to enter into and upon all and singular the premises hereby conveyed, or intended so to be, and each and every part thereof; to have, hold, and use the same, operating by their or his superintendents, managers, receivers, or servants, or other attorneys or agents, the said railway, and conducting the business thereof, and making from time to time all repairs and replacements, and such useful alterations, additions, and improvements thereto as may seem to them or him to be judicious; and to collect and receive all tolls, freights, incomes, rents, issues, and profits of the same, and of every part thereof; and, after deducting the expenses of operating the said railway and conducting its business, and of all the said repairs, replacements, alterations, additions, and improvements, and all payments which may be made for taxes, assessments, charges, or liens prior to the lien of these presents upon the said premises, or any part thereof, as well as a just compensation for their or his own services, to apply the moneys arising as aforesaid to the payment of interest in the order in which such interest shall have become, or shall become due, rateably to the persons holding the bonds entitled to such interest; and, after paying all interest which shall then be payable, as herein above provided, to apply the same to the satisfaction of the principal of the aforesaid bonds which may be at that time unpaid, rateably and without discrimination or preference.

ARTICLE 3. In case default shall be made as aforesaid, and shall continue as aforesaid, then, and in that case, upon requisition as aforesaid, it shall likewise be lawful for the said trustees, or the survivor of them, or their or his successors, after entry as aforesaid, or other entry, or without entry, personally or by their or his attorneys or agents, to sell and dispose of all and singular the premises hereby conveyed, or
144 intended so to be, at public auction, in the city of New York, or at such place, within any of the States in which any part of the said railway is situate, which the said trustees may designate, and at such time as they may appoint, having first given notice of the place and the time of such sale by advertisement, published not less than three times a week for six weeks, in one or more newspapers in the city of

New York, Pittsburgh, Chicago, and in Crestline and Fort Wayne, or some other places in the judicial districts of the United States in which Crestline and Fort Wayne are situated; or to adjourn the said sale from time to time in their or his discretion, and, if so adjourning, to make the same at the time and place to which the same may be so adjourned; and to make and deliver to the purchaser or purchasers thereof, good and sufficient deed or deeds in the law for the same, in fee-simple, which sale, made as aforesaid, shall be a perpetual bar, both in law and equity, against the parties of the first part, and all other persons lawfully claiming or to claim the said premises, or any part thereof, by, from, through, or under them, or any, or either of them; and, after deducting from the proceeds of such sale just allowances for all expenses of the said sale, including attorneys' and counsel fees, and all other expenses, advances, or liabilities which may have been made or incurred by the said trustees in operating or maintaining the said railway, or in managing its business while in possession, and all payments which may have been made by them for taxes or assessments, and for charges and liens prior to the lien of these presents on the said premises, or any part thereof, as well as compensation for their own services, to apply the said proceeds to the payment of the principal of such of the aforesaid bonds as may be at that time unpaid, and of the interest which shall at that time have accrued on the said principal, as herein provided, and be unpaid, without discrimination or preference, but rateably to the aggregate amount of such unpaid principal and accrued and unpaid interest; and if, after the satisfaction thereof, a surplus of the said proceeds shall remain, to pay over the same to the said Pittsburgh, Fort Wayne and Chicago Railway Company, or to such other parties as may be entitled to receive the same.

And it is hereby declared that the receipt or receipts of the said trustees shall be a sufficient discharge to the purchaser or purchasers of the premises for his or their purchase-money; and that such purchaser or purchasers, his or their heirs, executors, or administrators, shall not, after payment thereof, and having such receipt, be liable to see to its being applied upon or for the trusts and purposes of these presents, or in any manner howsoever be answerable for any loss, misapplica-
145 tion, or non-application of such purchase-money, or any part thereof, or be obliged to inquire into the necessity, expediency, or authority of or for any such sale.

ARTICLE 4. At any sale of the aforesaid property, or any part thereof, whether made by virtue of the power herein granted, or by judicial authority, the trustees shall bid for and purchase, or cause to be bid for and purchased, the property so sold, or any part thereof, in behalf of all the holders of the bonds secured by this instrument and then outstanding, in the proportion of the respective interests of such bondholders, at a reasonable price, if but a portion of the said property shall be sold; or, if all of it be sold, at a price not exceeding the amount of such bonds outstanding, with the interest accrued thereon.

ARTICLE 5. The Pittsburgh, Fort Wayne and Chicago Railway Company shall, from time to time, and at all times hereafter, and as often as thereunto requested by the trustees, execute, deliver, and acknowledge all such further deeds, conveyances, and assurances in the law, for the better assuring unto the trustees, and their successors in the trust hereby created, upon the trustees herein expressed, the railway, equipments, and appurtenances hereinbefore mentioned, or intended so to be, and all other property and things whatsoever which may be hereafter acquired for use in connection with the same or any part thereof, and

all franchises now held, or hereafter acquired, including the franchise to be a corporation, as by the trustees or the survivor of them, or their successors, or by their or his counsel learned in the law, shall be reasonably advised, devised, or required.

ARTICLE 6. Every conveyance, by way of release or otherwise, which may be executed and delivered in pursuance of article tenth of the deed of trust prior in lien to these presents, by which the first-mortgage bonds of the Pittsburgh, Fort Wayne and Chicago Railway Company are secured, shall operate to discharge the lands or other property so conveyed, from the lien of these presents, as fully and effectually as such conveyance shall operate to discharge the same from the lien of the said trust deed; and every power or authority which may be exercised, and every act or thing which may be done or suffered by the trustees of the said trust deed, in pursuance of the said article tenth, shall have the same effect with respect to the rights of the holders of bonds secured by these presents, as with respect to the rights of holders of bonds secured by the said deed of trust.

ARTICLE 7. If the said Pittsburgh, Fort Wayne and Chicago Railway Company shall well and truly pay the sums of money herein required to be paid by the said company, and all interest thereon,
146 at the times and in the manner herein specified, and shall well and truly keep and perform all the things herein required to be kept or performed by the said company, according to the true intent and meaning of these presents, then, and in that case, the estate, right, title, and interest of the said parties of the second part, and of their successors in the trust hereby created, shall cease, determine, and become void; otherwise the same shall be and remain in full force and virtue.

ARTICLE 8. The said Pittsburgh, Fort Wayne and Chicago Railway Company shall, at all times hereafter, keep at their office or agency in the city of New York a book for the transfer of its bonds; and shall also keep a transfer book at Pittsburgh, and such other place as the said company may appoint. And the said company shall likewise keep a book at their office or agency in the city of New York, which shall be designated as the voting register of the third-mortgage bondholders, and shall be distinct from the transfer register of the bonds. Any holder of any of the said bonds shall be entitled to have his name and address, and the denomination and the number of every of the said bonds held by him, entered in such registry on presenting at the aforesaid office or agency a written statement of the said particulars, signed by himself, and, if required, duly verifying his title thereto by producing the bonds, or upon filing with the company the written order of the person last registered as the holder, or in such other mode as may be prescribed by the regulations for such verification. The trustees may, in the first instance, prescribe the said regulations, subject to the power hereby declared of the bondholders, acting by a majority in interest, to adopt, alter, or repeal, from time to time, the said regulations, and generally to establish such as may seem to them expedient. Such registration shall authenticate the right of the holder of every bond so registered to vote on the said bond, as provided therein, at every general and special meeting of the stockholders of said company; and shall also entitle the said holder to notice, in such mode and form as may be fixed by regulations prescribed or established as aforesaid, of all meetings of the third-mortgage bondholders. The trustees, and each of them, shall at all times have free access to such book of registry, and shall, from time to time, and at all times, on the request, in

writing, of either of them, be furnished with a copy thereof by the said company; and shall have a right to require, at their opition, that any act or resolution of the said bondholders, affecting their duties or the interest of the trust hereby created, shall be authenticated by the signatures of all the persons assenting thereto, as well as by a minute of the proceedings of the meeting. Meetings of the third-mortgage
147 bondholders may be called by the trustees, or in such other mode as may be fixed by regulations prescribed or established as aforesaid, and the bondholders may vote thereat in person or by proxy; and the quorum may be defined, and such other regulations or by-laws in respect to such meetings may be, from time to time, established, altered, or repealed by the bondholders, acting by a majority in interest, as to them shall seem expedient; and until the bondholders shall act, such powers may be temporarily exercised by the trustees.

ARTICLE 9. It is hereby declared and agreed that the words "net earnings," as used in these presents, shall be construed to mean such surplus of the earnings of the said railway as shall remain after paying all expenses of operating the said railway and carrying on its business, including all taxes and assessments and payments on incumbrances prior in lien to these presents upon specific portions of the property hereby conveyed, of completing, repairing, or replacing the said railway, its appurtenances and equipments, so that the same shall be in high condition, and of providing such additional equipment as the said company shall deem necessary for the business of the said railway.

And it is further declared and agreed that the default contemplated in articles second and third of these presents shall consist in the omission to apply the aforesaid net earnings for any calendar year, after satisfying the payments for interest and special sinking fund of the first-mortgage bonds, and of the second-mortgage bonds, secured by trust deeds prior in lien to these presents, and hereinbefore mentioned, to the payment of interest upon the income bonds secured by these presents; which application shall be made upon the first day of April, next after the termination of such calendar year: Provided, that such portion of the said earnings as shall amount to less than one-half of one per cent. upon the aggregate amount of the income bonds then outstanding shall be reserved and carried to the interest fund for the next year for the said income bonds.

And it is further agreed and declared that the requisition which shall be necessary to authorize or require the trustees to exercise the power of entry or sale hereinbefore granted, shall be in writing, and signed by the holders of a majority in interest of the income bonds then outstanding, secured by these presents.

ARTICLE 10. It is mutually agreed by and between the parties hereto, that the word "trustees," as used in these presents, shall be construed to mean the trustees for the time being, whether one or both be original or new; and, whenever a vacancy shall exist, to mean the surviving or continuing trustee, and such trustee shall, during such vacancy, be competent to exercise all the powers granted by these presents to the parties of the second part. And it is mutually agreed by and be-
148 tween the parties hereto, as a condition on which the parties of the second part have assented to these presents, that the said trustees shall not be in any manner responsible for any default or misconduct of each other; that the said trustees shall be entitled to just compensation for all services which they may hereafter render in their trust, to be paid by the said company; that either of the said trustees, or any successor, may resign and discharge himself of the trust created

by these presents, by notice in writing to the Pittsburgh, Fort Wayne and Chicago Railway Company, and to the existing trustee, if there be such, three months before such resignation shall take effect, or such shorter time as they may accept as adequate notice, and upon the due execution of the conveyances hereinafter required; that the said trustees, or either of them, may be removed by the vote of a majority in interest of the holders of the aforesaid bonds, the said vote being had at a meeting, duly held, of the said bondholders, and attested by an instrument under the hands and seals of the persons so voting; that in case, at any time hereafter, either of the said trustees, or any trustee hereafter appointed, shall die, or resign, or be removed as herein provided or by a court of competent jurisdiction, or shall become incapable or unfit to act in the said trust, a successor to such trustee shall be appointed by the surviving or continuing trustee with the consent of the holders for the time being of a majority in interest of the said bonds then outstanding, or the consent of a meeting, duly held, of the holders of the said bonds; and the trustee so appointed, with the trustee so surviving or continuing, shall thereupon become vested with all the powers, authorities, and estates granted to or conferred upon the parties of the second part by these presents, and all the rights and interests requisite to enable him to execute the purposes of this trust, without any further assurance or conveyance, so far as such effect may be lawful; but the surviving or continuing trustee shall immediately execute all such conveyances and other instruments as may be fit or expedient for the purpose of assuring the legal estate in the premises, jointly with himself, to the trustee so appointed; and upon the death, resignation, or removal of any trustee, or any appointment in his place in pursuance of these presents, all his powers and authorities by virtue hereof shall cease; and all the estate, right, title, and interest in the said premises of any trustee so dying, resigning, or being removed, shall, if there be a co-trustee surviving or continuing in office, wholly cease and determine; but the said trustee, so resigning or being removed, shall, on the written request of the new trustee who may be appointed, immediately execute a deed or deeds of conveyance to vest in such new trustee, jointly with the continuing trustee, and upon the trusts herein expressed, all the property, rights, and franchises which may be at that time held upon the said trusts: Provided, nevertheless, that it is hereby agreed and declared that for the first vacancy in the trust hereby created which may happen as hereinbefore provided, in respect to either of the parties of the second part hereto, Charles Lanier, of the city and State of New York, is hereby designated and appointed to fill such vacancy, with the same effect as if he had been appointed in the manner hereinbefore specified; and in case it shall at any time hereafter prove impracticable, after reasonable exertions, to appoint in the manner hereinbefore provided a successor in any vacancy which may happen in said trust, or in case the trust shall become wholly vacant, application, in behalf of all the holders of the bonds secured hereby, may be made by the surviving or continuing trustee; or, if the trust be wholly vacant, by holders of the said bonds to the aggregate amount of one hundred thousand dollars, to any circuit court of the United States for any judicial district in which any part of the aforesaid railway may be situate, for the appointment of a new trustee or new trustees.

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In witness whereof the parties of the first part have hereunto set their respective hands and seals, and the parties of the second part have also set their respective hands and seals, for the purpose of evidencing

their acceptance of the trust hereby created, on the day and year first above written.

JAMES F. D. LANIER. [L. S.]
SAMUEL J. TILDEN. [L. S.]
LOUIS H. MEYER. [L. S.]
J. EDGAR THOMSON. [L. S.]
SAMUEL HANNA. [L. S.]
JOHN FERGUSON. [L. S.]
SAMUEL J. TILDEN. [L. S.]

Signed, sealed, and delivered in presence of—
JAMES P. SINNOTT and JOHN L. DRUMMOND.

150 Also, deed 20th Sept., 1862. The Pittsburgh, Fort Wayne and Chicago Railway Company to trustees, for further assurance, as follows:

Deed for further assurance.

This indenture, made this twentieth day of September, in the year of our Lord one thousand eight hundred and sixty-two, between the Pittsburgh, Fort Wayne and Chicago Railway Company, of the first part, and John Ferguson and Samuel J. Tilden, of the city and State of New York, of the second part:

Whereas in and by a certain indenture, bearing date the second day of March, A. D. 1862, made and delivered by and between James F. D. Lanier and Mary M. Lanier, his wife, Samuel J. Tilden, bachelor, and Louis H. Meyer and Ann Charlotte Meyer, his wife, of the city and State of New York; J. Edgar Thomson and Lavinia F. Thomson, his wife, of the city of Philadelphia, and State of Pennsylvania; and Samuel Hanna and Eliza Hanna, his wife, of the town of Fort Wayne, and State of Indiana, of the first part, and the Pittsburg, Fort Wayne and Chicago Railway Company, of the second part; the said company covenated and agreed to execute, deliver, and acknowledge all such further deeds, conveyances, and assurances in the law for the better assuring unto the trustees of the three several deeds of trust or mortgage in the said indenture mentioned, upon the trusts in the said deed of trust or mortgage expressed, the railway, its equipments and appurtenances therein mentioned, or intended so to be, and all other property and things whatsoever, which may be thereafter acquired for use in connection with the same or any part thereof, and all franchises then held or thereafter acquired, including every franchise to be a corporation, as by the said trustees shall be required:

And whereas the said parties of the second part to these presents, as trustees of the said three several deeds of trust or mortgage, have requested the said party of the first part to these presents to execute, deliver, and acknowledge to the said parties of the second part, as such trustees, a deed of trust or mortgage in pursuance of the said covenant:

Now, this indenture witnesseth: That the party of the first part, in consideration of the premises, and of one dollar to it in hand paid, the receipt whereof is hereby acknowledged, has granted, bargained, and sold, and does by these presents grant, bargain, sell, convey, and transfer unto the parties of the second part, all and singular, the continuous railway extending from its eastern terminus in Pittsburgh, in the State of Pennsylvania, to Chicago, in the State of Illinois, and commonly known as the Pittsburgh, Fort Wayne and Chicago Railroad or Railway, includ-

ing all the railways, ways, and rights of way, depot grounds, and other lands; all tracks, bridges, viaducts, culverts, fences, and other structures; all depots, station-houses, engine-houses, car-houses, freight-houses, wood-houses, and other buildings; and all machine-shops and other shops held or acquired for use in connection with the said railway or the business thereof, and including also all locomotives, tenders, cars, and other rolling stock or equipment, and all machinery, tools, implements, fuel, and materials for the constructing, operating, repairing, or
151 replacing the said railway or any part thereof, or any of its equipments or appurtenances; and also, all franchises connected with or relating to the said railway, or the construction, maintenance, or use thereof, and also all the property, franchises, rights, and things of whatever name or nature which were conveyed by the aforesaid indenture to the party of the first part hereto, and also all lands, equipments, and other property and things, of whatever name and nature, which have been acquired or which may be hereafter acquired for use in connection with the said railway or any part thereof, or any of its equipments or appurtenances; and all franchises now held or which may be hereafter granted to or acquired by the said company, including all franchises to be a corporation, subject, nevertheless, to the three several deeds of trust or mortgage in said indenture mentioned and to the other liens in the said several deeds of trust or mortgage and in the said indenture, or either of them, mentioned, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversions, remainders, tolls, incomes, rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, and to the same, and any and every part thereof, with the appurtenances: To have and to hold the above-described premises and appurtenances, subject as aforesaid unto the said parties of the second part, as joint tenants, and not as tenants in common, and to the survivor of them and to the heirs and assigns of such survivor, to the only proper use and behoof of the said parties of the second part and of the survivor of them, and of the heirs and assigns of such survivor; in trust, nevertheless, for the purposes expressed and upon the trusts declared in the said three several deeds of trust or mortgage in the said conveyance mentioned, according to the priorities in and by the said deeds of trust or mortgage respectively established.

In witness whereof the party of the first part has caused its corporate seal to be hereunto affixed and the same to be attested by the signatures of its president and secretary; and the parties of the second part have also set their respective hands and seals for the purpose of evidencing their acceptance of the trust hereby created, on the day and year first above written.

[SEAL RAILWAY COMPANY.] G. W. CASS,
President Pittsburg, Fort Wayne and Chicago Railway Co.

W. H. BARNES, *Secretary.*

Sealed and delivered in presence of—
SAMUEL J. TILDEN and
JOHN FERGUSON.

152 Deposition of Auguste A. Entz & S. S. Sanzade read, showing that company paid the coupons on the P., F. W. & Ch. R. W. Co. on all their bonds, which are made payable in New York. 47 m's

in Penn'a. Whole bonds secured by these mortgages, $634,000, payable to citizens of Penn'a.

Deposition as follows:

152½ DAUPHIN COUNTY, *ss:*

{SEAL OF THE COURT OF COMMON PLEAS OF DAUPHIN CO. PA.}

The Commonwealth of Pennsylvania to R. A. Wright, esq., greeting:

Know ye that, in confidence of your prudence and fidelity, we have appointed you, and by these presents do give unto you full power and authority, in pursuance of an order made in our court of common pleas for the county of Dauphin, in a certain cause there pending, (296, April term, 1868,) wherein The Commonwealth of Pennsylvania is plaintiff and The Pittsburgh, Fort Wayne & Chicago R. R. Co. is defendent, to call before you at a certain day and place, by you for that purpose to be appointed, all and every person and persons who may be named to you, as well on the part of the plaintiff as on the part of the defendant, or either of them, as witnesses touching the premises mentioned in the interrogatories hereto annexed, and reduce their testimony to writing; and when you shall have so done, you are to send the same before us in our court of common pleas aforesaid, together with the interrogatories and this writ, under your hands and seals, or of such of you shall act therein.

In testimony whereof we have caused the seal of our said court to be hereunto affixed. Witness my hand at Harrisburg, the 23d day of April, A. D. eighteen hundred and sixty-nine.

JOS. H. NISLEY,
Prothonotary.

153 *Copy of rule to take depositions and interrogatories.*

In Dauphin common pleas. April term, 1868.

THE COMMONWEALTH OF PENNSYLVANIA
vs.
THE PITTSBURG, FORT WAYNE AND CHICAGO Railway Company. } No. 296.

And now, to wit, April 23, 1869, the defendants in the above-stated case enters a rule for a commission to issue to the city of New York, in the State of New York, to take the testimony of a witness to be produced, sworn or affirmed, and examined on behalf of the defendant, & nominates as commissioner to take such testimony, R. A. Wright, esq., of No. 25 Exchange Place, New York City, and files the following interrogatories.

J. W. SIMONTON,
Att'y for Def't.

To JOS. H. NISLEY, Esq.,
Proth'y.

To BENJAMIN HARRIS BREWSTER,
Attorney General of the State of Pennsylvania.

154 SIR: You will please take notice that the foregoing rule, with the interrogatories proposed to be put to the witness, has been this day entered and filed in the office of the prothonotary of the above-

stated court, and that said commission will issue on the expiration of fifteen days from this date, within which time you may file cross-interrogatories and nominate a commissioner, if you think proper to do so.

J. W. SIMONTON,
Att'y for Def'ts.

APRIL 23, 1869.

In Dauphin County common pleas. April term, 1868.

THE COMMONWEALTH OF PENNSYLVANIA
vs.
THE PITTSBURG, FORT WAYNE AND CHICAGO Railway Company. } No. 296.

Interrogatories to be propounded to S. S. Sanzade and A. A. Entz, of the city of New York, witnesses to be produced, sworn or affirmed, and examined on behalf of the defendant in the above-stated case.

155 1st. State where is your place of residence; whether you are a member of, or in the employ of, Winslow, Lanier & Co., and in what business is said firm engaged, and where and what are the duties of the position or employment you have in said firm?

2d. State if said firm of Winslow, Lanier & Co. act as bankers and financial agents of the Pittsburg, Fort Wayne and Chicago Railway Co., defendant in this case. If so, how long have they acted as such?

3d. State whether said firm, as such bankers and financial agents, pay the coupons and dividends on the bonds which constitute the funded debt of said company defendant.

4th. State, if you can, the amount of the funded debt of said company defendant, and the nature of the obligations by which it is represented & secured.

5th. State, if you can from your own personal knowledge, whether any of said debt is owing to, and any of such obligations are held and owned by, persons who are not residents in nor citizens of the State of Pennsylvania.

156 6th. State, if you can from your own personal knowledge, whether any of said debt is owing to, and if such obligations are held by, persons who are not residents in nor citizens of the United States.

7th. State, if you can from your own personal knowledge, what amount of said debt is owing to, and what amount of said obligations are held by, persons who are not residents in nor citizens of the State of Pennsylvania.

8th. If you answer the fifth interrogatory in the affirmative, state, if you can from your own personal knowledge, what amount of said debt is owing to, and what amount of said obligations are held by, persons who are not residents in nor citizens of the United States.

9th. State if you have in your possession a registry of any part or series of the obligations by which the funded debt of said company defendant is represented and secured.

10th. If you have such registry in your possession, state if it shows the names and residences of the holders and owners of the bonds and obligations registered.

157 11th. If you answer the last preceding interrogatory in the affirmative, state where such registry shows the residences of such holders and owners to be, whether within or without the State of

Pennsylvania, and whether any of them without the United States; and if so, what amount held out of the State of Pennsylvania and what amount held out of the United States.

12th. Do you know, or can you set forth any other matter or thing which may be a benefit or disadvantage to the parties in this case, or either of them, or material to the subject of this your examination, or the matter in question in this case? If so, state the same as fully as if you were particularly interrogated thereto.

J. W. SIMONTON,
Counsel for Def'ts.

I hereby accept service of notice of entering the above rule, and consent to waive the notice of 15 days, and that the commission shall issue immediately.

LEWIS WALN SMITH,
Dep. Att'y Gen'l.
For B. H. BREWSTER,
Att'y Gen'l.

OFFICE OF ATT'Y GEN'L,
Harrisburg, Pa., Ap'l 23d, 1869.

158 Depositions of witnesses produced, sworn, and examined on the seventh day of May, in the year of our Lord one thousand eight hundred and sixty-nine, at No. 26 Exchange Place, in the city of New York, county and State of New York, by virtue of a commission issuing from the court of common pleas of Dauphin County, State of Pennsylvania, to R. A. Wright directed, for the examination of witnesses in a certain cause depending in said court, wherein The Commonwealth of Pennsylvania is plaintiff, and The Pittsburg, Fort Wayne and Chicago Railway Company is defendant.

AUGUSTE A. ENTZ, of Morrisiania, New York, aged twenty-six years, or thereabouts, being produced, sworn, and examined on behalf of the defendant, deposes as follows:

First. To the first interrogatory on the part of the defendant he answers as follows: "I reside in Morrisiania, New York. I am in the employ of Winslow, Lanier & Company, and that firm is engaged in the business of banking, in the city of New York. My position in said house is that of transfer clerk, and my duties as such are to take
159 charge of the transfer and registry of all the stock and bonds of the Pittsburg, Fort Wayne and Chicago Railway Company, defendant, and to pay the dividends and coupons or interest thereon."

Second. To the second interrogatory on the part of the defendant he answers as follows: "The said firm of Winslow, Lanier & Co. does act as the bankers and financial agents of the Pittsburg, Fort Wayne and Chicago Railway Company, defendant in this case, and has so acted for seven or eight years."

Third. To the third interrogatory on the part of the defendant he answers as follows: "They do."

Fourth. To the fourth interrogatory, on the part of the defendant, he answers as follows: "The aggregate funded debt of said company, defendant herein, is $13,063,000 00, (thirteen millions and sixty-three thousand dollars,) which is represented and secured as follows, viz: $5,250,000 00, (five millions two hundred and fifty thousand dollars,) first-mortgage seven per cent. bonds, issued by the Pittsburg, Fort Wayne and Chicago Railway Company, payable in the year 1912, in the city of New

York aforesaid, with semi-annual interest thereon, also payable
160 in the said city of New York, and both principal and interest secured by a first lien or mortgage upon the whole line of railway from Pittsburg, Penn'a, to Chicago, Illinois, with all its equipments and appurtenances. The line of railway so mortgaged, is (468) four hundred & sixty-eight miles in length, whereof (47) forty-seven miles, or one-tenth of the whole, is within the State of Pennsylvania, and the remainder in the States of Ohio, Indiana, and Illinois. $5,160,000 00, (five millions one hundred and sixty thousand dollars) of second-mortgage seven per cent. bonds, issued by the Pittsburg, Fort Wayne and Chicago Railway Company, payable in the year 1912, in the city of New York, with semi-annual interest thereon, also payable in said city of New York, and both principal and interest secured by a second lien or mortgage upon the whole line of railway from Pittsburg, Pa., to Chicago, Illinois, with all its equipments and appurtenances, consisting as above mentioned. $2,000,000 00 (two millions of dollars) of third-mortgage seven per cent. bonds, issued by the Pittsburg.
161 Fort Wayne and Chicago Railway Company, payable in the city of New York, in the year 1912, with semi-annual interest thereon also payable in said city, and the principal only secured by a third lien or mortgage upon the whole line of railway from Pittsburg to Chicago aforesaid, with all its equipments and appurtenances composed as above stated. $153,000 00 (one hundred & fifty-three thousand dollars) of seven per cent. bonds, payable in 1876, issued by the Ohio and Pennsylvania Railroad Company, and assumed in the consolodation by the Pittsburg, Port Wayne and Chicago Railway Company. These are generally known as the bridge bonds. $500,000 00 (five hundred thousand dollars) of eight (8) per cent. bonds, known as equipment bonds, issued by the Pittsburg, Fort Wayne and Chicago Railway Company due in 1874, payable, principal and interest, in the city of New York, and not secured by lien or mortgage."

Fifth. To the fifth interrogatory, on the part of the defendant, he answers as follows: "From my own personal knowledge I can say that a large amount of said debt is owing to, and a large number of such obligations are owned and held by, persons who are not residents in nor citizens of the State of Pennsylvania."

162 Sixth. To the sixth interrogatory, on the part of the defendant, he answers as follows: "If I rightly understand the term 'personal knowledge,' I do not know that I have any strictly personal knowledge that any of said debt is owing to, or any of such obligations are held by, persons who are not residents in nor citizens of the United States. What I do know is that the interest on a considerable portion of said debt is collected by foreign banking firms, who have stated to me that the owners of the principal reside abroad, and they have deposited with me powers of attorney in their favor, executed by parties, registered on the books as residing out of the United States, in the same foreign countries in which they are so represented on the company's books to reside, duly certified by the notaries and consuls of the United States in such respective foreign countries."

Seventh. To the seventh interrogatory, on the part of the defendant, he answers as follows: "I cannot state the full amount from my own personal knowledge, which embraces a portion only of the large amounts which I have any reason, except personal knowledge, to believe is owing to, and held by, persons who are not residents in nor
163 citizens of the State of Pennsylvania."

Eighth. To the eighth interrogatory on the part of the defend-

ant, he answers as follows: "I cannot so state for the reasons given in my answer to the sixth interrogatory.

Ninth. To the ninth interrogatory, on the part of the defendant, he answers as follows: I have such a registry in my possession.

Tenth. To the tenth interrogatory, on the part of the defendant, he answers as follows: Such registry shows both the names and residences of about one-third of all the holders and owners of the funded obligations or debt, meaning one-third in amount. In some instances only the name is registered and residence not entered.

Eleventh. To the eleventh interrogatory, on the part of the defendant, he answers as follows: Such registry shows the residence of a portion of said holders and owners to be within and a portion without the United States. Of those in the United States it shows a part to reside within and a part without the State of Pennsylvania. The
164 amount appearing on said registry as held out of the State of Pennsylvania, *the amount appearing in said registry as held out of the State of Pennsylvania*, is four millions three hundred and seventy-four thousand dollars, and the amount held out of the United States (which is included in said last-mentioned sum) is three hundred and seventy thuosand dollars.

Twelfth. To the twelfth interrogatory, on the part of the defendant, he answers as follows: The amount appearing on said registry as held within the State of Pennsylvania is six hundred and thirty-four thousand dollars, and no more. I should have added to my answer to the tenth interrogatory, the remainder of said bonds appear on the said books as registered, "payable to bearer," neither name nor residence being given. I think of nothing further to add in answer to this general interrogatory.

AUGUSTE A. ENTZ.

R. A. WRIGHT,
Commissioner.
MAY 7, 1869.

JOHN S. SANZADE, of Jersey City, in the State of New Jersey, being produced, sworn, and examined on the part of the defendant, deposeth as follows:

165 First. For answer to the first interrogatory, on the part of the defendant, he deposeth as follows: I am thirty-nine years of age; I reside in Jersey City, New Jersey; I am a member of the firm of Winslow, Lanier & Company, which firm is engaged in the business of banking, and my duties in said firm are the ordinary duties of a general partner.

Second. To the second interrogatory, on the part of the defendant, he answers as follows: They do and have so acted ever since the organization of the Pittsburg, Fort Wayne and Chicago Railway Company in 1861 or 1862.

Third. To the third interrogatory, on the part of the defendants, he answers as follows: They do.

Fourth. To the fourth interrogatory, on the part of the defendant, he answers as follows: The whole amount of the funded debt is correctly stated in the answer to this interrogatory made by the other witness, Auguste A. Entz, which answer I have just read. The mortgages, therein mentioned, are upon the continuous line of the defendant's railway, from Pittsburg to Chicago, situate within the four States of
166 Pennsylvania, Ohio, Indiana, and Illinois. The mortgages also cover the franchises of the said corporation.

Fifth. To the fifth interrogatory, on the part of the defendant, he answers as follows: From my own personal knowledge a larger part of such debt is owing to, & *and* a larger amount of such obligations are held and owned by, persons who are not residents in nor citizens of the the State of Pennsylvania. For example, the firm of Winslow, Lanier and Co. own and hold a large amount of such obligations and the individual members of said firm own and hold large additional amounts, yet neither the said firm nor any of the partners are residents in or citizens of said State.

Sixth. To the sixth interrogatory, on the part of the defendant, he answers as follows: I have no strictly personal knowledge on the subject. I know that a portion of said debt is owing to foreigners and non-residents only as Mr. Entz knows it, whose answer to this interrogatory I have just read.

Seventh. To the seventh interrogatory, on the part of the de-
167 fendant, he answers as follows: I personally know of a large amount of such debt and obligations held by persons who are not residents in nor citizens of the State of Pennsylvania, but cannot so state the full amount.

Eighth. To the eighth interrogatory, on the part of the defendant, he answers as follows: "I cannot state from my own personal knowledge. There is a large amount which I believe to be so held by persons who are non-residents and foreigners, and all the circumstances attending the collection of the interest on that portion of the debt, confirm me in that belief, but I have no strictly personal knowledge on the subject."

Ninth. To the ninth interrogatory, on the part of the defendant, he answers as follows: "The firm of Winslow, Lanier and Company, have such a registry in their possession, which is in the special charge and possession of Auguste A. Entz, as their transfer clerk."

Tenth. To the tenth interrogatory, on the part of the defendant, he answers as follows: "I have read the answer of Mr. Auguste A. Entz, to this interrogatory, and the same is correct."

168 Eleventh. To the eleventh interrogatory, on the part of the defendant, he answers as follows: "I make the same answer to this interrogatory, as I did to the tenth."

Twelfth. To the twelfth interrogatory, on the part of the defendant, he answers as follows: "The first, second, and third mortgage bonds of the Pittsburg, Fort Wayne and Chicago Railway Company, defendant, are secured upon the whole of the continuous railway, with all its franchises, equipments, and appurtenances. This railway is four hundred and sixty-eight miles in length, one-tenth whereof, or forty-seven miles, is within the State of Pennsylvania, and the remainder is in the States of Ohio, Indiana, and Illinois. If the said mortgages or either of them should be foreclosed, the whole of said railway from Pittsburg to Chicago would have to be sold. I have been connected with the defendant as one of its financial agents since its organization, and ever since the issue of the bonds hereinbefore mentioned, and I have every reason, except personal knowledge in its strictest sense, to believe that all of its bonds and obligations, except less than one
169 million of dollars, are held and owned by persons who are not residents of the State of Pennsylvania.

JOHN S. SANZADE.

R. A. WRIGHT,
Commissioner.

MAY 7, 1869.

The foregoing depositions are endorsed as follows:

The Commonwealth of Pennsylvania vs. Pittsburg, F't Wayne & Chicago Railway Company. N. 296. April T, 1868. Depositions.

The execution of this commission appears in a certain schedule hereunto annexed.

R. A. WRIGHT,
Commissioner.

MAY 7, 1869.
Filed May 19, 1869.

170 *Charge of the court.*

The Pittsburg, Fort Wayne and Chicago Railway Company was incorporated by the States of Pennsylvania, Ohio, Indiana, and Illinois. The road is about four hundred and sixty-nine miles in length, some forty-seven miles of which is within the State of Pennsylvania. The average funded debt of the company amounts to some $12,671,000, the most of which is secured by first, second, and third mortgages, besides $59,500, a loan made to build a depot at Chicago, the whole bearing interest at the rate of $7\frac{3}{10}$ per cent., payable semi-annually, as appears by the returns made by the company to the auditor general's office. The whole indebtedness is secured by bonds with coupons attached.

The accounting department of Pennsylvania charged the company with a tax on its interest paid to the bond-holders for a fractional portion of the year 1864, and the whole of 1865, 1866, and 1867, amounting to $14,789 01 in all, and deducted therefrom the commission to the treasurer of the corporation, amounting to $278 90, computing the tax according to the supposed length of the road within this State, $\frac{50}{469}$ parts. No exception is taken to the amount, but it is contended that no tax whatever can be imposed on these loans, as the whole road is not situated in Pennsylvania, but in three other States, mainly in Ohio and Indiana, and partly in Illinois; and the company does not know from which of the coupons to make the deduction, and consequently cannot lawfully take it off of the claims of any holder.

Two questions are presented. First: Can the legislature impose the tax? And second: Is it done by our laws? The power to tax rests upon necessity, and is inherent in every sovereignty. It is unlimited in extent, except by express constitutional prohibition, and in amount is coextensive with the wants and necessities of the government. It applies to every species of property or rights, either created or protected by the law; and although it may not be imposed upon, or enforced against, the persons of individuals not amenable to, or protected by, the laws of the State, yet it may against every species of property or rights which come within the limits of the Commonwealth. This corporation derives its franchises, in part, from Pennsylvania legislation; all of its property within the State is protected by our laws, and although the creditors of the company are beyond our borders, yet their debts, and the effects from which they must be paid, the franchises and corpus of the railroad, are under State jurisdiction and protection, and the holder of the obligation must depend upon our laws for its collection. What would his debt be worth if he could not look to our
171 laws for its enforcement? And the very property which stands as its security was created and is upheld by our authority. We think that it would be impossible to doubt the power of the State to tax the stock of the non-resident corporator in this road, or at least so much of

it as is constructed in Pennsylvania, and to enforce payment, if necessary, by a seizure of the property and franchises of the corporation; and why should not the same right exist against the debts with which the road was built? They equally have and require the protection of our laws, and the principle of taxation is corelative with protection.

By the 32d section of the act of 1844, all moneys owing by solvent debtors was subjected to taxation, however the same might be secured, and this even fell on the holder of State bonds and stocks, which tax the state treasurer was required to withhold from the creditor when paying interest. By the act of May 1, 1854, P. L., p. 536, it is declared "that all bonds and certificates of loans of any railroad company incorporated by this Commonwealth be, and the same shall be, liable to taxation for State purposes only." Showing most clearly the legislative intention to relieve those debts from the burden of county and township taxes, but to subject them to that of the Commonwealth. No method was provided for collecting this tax where the creditor resided out of the Commonwealth, until the enactment of the act of April 30, 1864, the third section of which required the president, treasurer, cashier, or other officer of any company incorporated by the laws of this State to deduct the State tax due upon its bonds or indebtedness, and pay over the same to the state treasurer. A similar provision is made as to city or county bonds, by the 4th section of the same act. (See P. L. 1864, p. 219.) No exception is allowed as to the debts due to non-residents by either of these enactments. Money is quite as likely to be lent to citizens of another State by one of our cities or counties as to a railroad company; yet it is probable that the duty and obligation of such city or county treasurer to retain the tax was never doubted. No one can read these various enactments without coming to the conclusion that it was the legislative intention to collect a State tax from all creditors of corporations, whether private or municipal, without regard to the residence of the holder of the obligation; and it is equally manifest that this system of retention was designed to meet the case of absentees, as our own citizens were obliged to return their amount of money at interest to the township assessors. If the non-resident holder of such bonds could not be taxed, the most gross frauds would be practiced by colorable transfers to persons out of the State, or by handing over the coupons to such for presentation to the treasurers.

But why should we, sitting in an inferior court, reason on this subject. Every legal question referred to thus far has received a judicial construction by the supreme court of this State. Maltby vs. The
172 Reading & Columbia Railroad Company, 2 P. F. Smith, 140, decides that the tax now in controversy is imposed, by the various statutes cited, on corporation loans; is authorized to be retained by the act of 1864, and must be deducted from the bonds held by non-residents as well as those residing in the State. The latter principle had been previously ruled in effect in West Chester School District vs. Darlington, 2 Wright, 157.

It is said, however, that these laws impair the obligation of the contract between the debtor and the creditor. We are unable to see in what particular. All citizens are subject to taxation, either in their persons or their property, or both. Therefore, where they lend money the loan may be taxed, and if the State, by its laws, chooses to make the debtor the collector, he may be ordered to withhold the amount from his obligation. If the creditor is a non-resident of the State his person cannot be taxed, but his money, lent to our citizens or institutions, may be, on account of the protection furnished to his claim or

the property on which it is secured, and the tax to be collected through the medium of the debtor. The laws tax the loan as property found here in Pennsylvania, and impose no heavier duty on it than on like property held by our own citizens. (See Maltby vs. The Railroad Company, already cited. Hood's estate, 9 Harris, 116.)

We come now to consider another branch of this case. The railroad extending partly through four States, can its bonds be taxed at all? If they can, must they be taxed in full, or in the proportion of the length of the road in this State? We have no express act of assembly authorizing the tax to be apportioned, yet the unvarying custom of the State officers has measurably established the law against any claim to charge in full where a large portion of the property is situated beyond our limits. It cannot be pretended that a State can by law impose a tax on that which is entirely beyond its jurisdiction, or on property to which its laws afford no protection. The custom to assess pro rata to the extent of the improvement in the State has received the sanction of the court in several cases when applied to the stock of corporations, and we can see no reason why the same doctrine should not prevail in regard to their bonds. The cases, we think, are strongly analogous. In The Easton Bridge Company vs. Northampton County, 9 Barr, 416, Judge Coulter says: "This State can tax all that is within its bounds, and which receives protection from its laws, unless exempted by the Constitution of the United States or of this State." That was a tax imposed both on the stock of the company and its money at interest. The bridge was incorporated under the laws of Pennsylvania and New Jersey, and extended across the Delaware River; one-half was situated in each State, and the tax was equally apportioned. In The Commonwealth vs. The Trenton Delaware Bridge Company, this court held that the State of Pennsylvania could tax only one-half of the capital stock of the
173 corporation, it being created by the laws of both States, and one-half of the bridge being in each. Pennsylvania could only tax the proportion of the property within her borders, as represented by the stock. The principle portion of the stock was owned by citizens of New Jersey, and the business of the company was transacted in that State. The decision was acquiesced in both by the attorney general and the corporation. (See the case, reported in full in the American Law Register, vol. 9, O. S., p. 298.) Again, in the case of the Commonwealth vs. The Cleveland, Painesville and Ashtabula Railroad Company, 5 Casey, 370, it was held by the supreme court that "the stock of the company was subject to taxation in proportion to the amount used in this State." That would be evidenced by the length of the road in Pennsylvania. Fractions of time have also been recognized, though not mentioned in the statute. (See 14 Wright, 399.)

We are met here by a decision of the Supreme Court of the United States in the case of Northern Central Railway Company vs. Jackson, which very clearly conflicts with all the cases cited. Jackson sued the railway company on the coupons due him for interest on his bonds. They were drawn in the usual form, payable to bearer, and the holder was a non-resident alien. The company defended as to the amount of tax paid by it to the Commonwealth, but it was not allowed by the court, which held that there could be no apportionment of the tax; that Pennsylvania undertook to collect taxes off of claims beyond her jurisdiction; that if she could tax, Maryland could also, which would lead to double taxation; and as many of the railroads passed through several States, each could impose the same burden, which would be most op-

pressive. If this case depended on the Constitution or any law of the United States, we should certainly consider ourselves bound by that decision. But as we understand the subject, it must be controlled by Pennsylvania law alone, which the learned judge who delivered the opinion does not seem to comprehend. If it even resulted in double taxation, that has never been considered unlawful in this State. On the contrary is of frequent occurrence. The real and personal property of a corporation may be taxed, although it pays a tax on the stock which purchased it. (Lackawanna Iron Company vs. Luzerne County, 6 Wright, 424, 431. See 3 Wright, 251; 6 Casey, 332; 9 Barr, 361.) The power of the legislature is as ample to tax twice as to tax once, (6 Casey, 332,) and it is done daily, as all experience shows. (9 Barr, 361.)

Equality of taxation is not required by our constitution. (7 Harris, 258. The stock may be fully taxed to the institution and also to the stockholders, (Whitesell vs. Northampton County, 13 Wright, 526, 529,) and the stockholder in a corporation of another State is obliged to pay a tax to Pennsylvania on his stock, he being a resident here al-
174 though the whole property and stock is subject to taxation in the State of its location. (13 Wright, 519.)

In the case reviewed in the Supreme Court of the United States, as in the case now on trial, there was no attempt on the part of Pennsylvania to tax property or rights beyond her jurisdiction, she did not propose to sever the bonds and say this one shall pay a tax to Maryland and that one to Pennsylvania, but she did equal justice to the creditor by saying: You shall pay your pro rata of the three mill tax to us, and no more, rating it according to the length of road in each State. The same is done here. The coupons being payable out of the State, we hold to be unimportant. The officers of the corporation are held personally responsible for the tax. It can be collected off them individually if they neglect to retain and pay it over. Nor is the State bound to pursue the mortgages to recover. She can seize the road situated within her borders by sequestration, until the debt is fully paid.

The negotiable character of these coupons will not exempt them from taxation, although they pass from hand to hand like bank notes. Every person receiving one is bound to know that it is taxable by law. The statutes are public, of which all the world must take notice.

Although part of these bonds are secured by mortgage, and others are not, yet that has no bearing, for if the mortgages are not protected as to all by our laws, yet the road on which the whole debt is secured is protected, and therefore is taxable. The hardship under which companies labor, situated like the defendant, has been strongly pressed on our consideration. Pennsylvania, through her courts, will compel the corporation to pay the tax, whilst the courts of the United States will oblige it to pay its coupons in full, thus throwing the burden of taxation on the debtor instead of the creditor, as intended by law. We do not think that this clashing of jurisdiction can be of long continuance. It is a settled principle of Federal jurisprudence that when the controversy arises on State laws, the United States court will follow the last decision of the court of final resort in the State. We consider the points raised here already decided by our supreme court. The United States court thought otherwise. When they are confessedly settled, there can thereafter be no clashing of jurisdiction. Should the supreme court of this State adopt our views, the United States judiciary must conform thereto, unless that court departs from its settled rule on the subject, or declares that the debts due to non-residents are protected from taxation by Federal laws, in which case our courts must succumb.

Should the principle contended for by the defendant prevail, it must debar all taxation on railroad stocks, as well as bonds, where the road extends partly through more than one State, and as nearly one-half of all the railroads in Pennsylvania run a distance into, and often
175 through other States, Pennsylvania would probably be deprived of a million of dollars per annum in taxes, as now assessed. Yet that apprehension should not for a moment influence the courts in declaring the law. We have made our decision irrespective of the consequences.

The Commonwealth's counsel objects to a deduction of $278 90, commission allowed by the defendant to the treasurer of the corporation, on the ground that he never paid over the money. No appeal is given by law to the State from the decision of its own officers, and none was taken in this case, so that if an error exists it cannot be corrected. On the other hand, the length of the defendant's road in Pennsylvania is computed at fifty miles, whereas the evidence shows it is only about forty-seven. When both errors are corrected there will not be a difference of over eight dollars between them, and that is against the State. You can therefore treat the settlement as correct, and allow interest on the amount found due the Commonwealth after the expiration of three months from the date thereof, at the rate of six per cent., this account having been adjusted at the department prior to the passage of the act of May 1, 1868, changing the rate of interest, and the time from which it is to be computed. Your verdict will be rendered for sixteen thousand one hundred forty-nine dollars seventy-four cents and costs of suit.

To this charge the defendant, by its counsel, and also the attorney general for the Commonwealth did except, and at the request of each this exception sealed.

JNO. J. PEARSON. [SEAL.]

176 In the court of common pleas of the county of Dauphin. No. 296. April term, 1868.

THE COMMONWEALTH OF PENNSYLVANIA
vs.
THE PITTSBURGH, FORT WAYNE AND CHICAGO Railway Company.

And now, to wit, March 15, 1870, trial ordered, jury called, came, &c., twelve good and lawful men of the county of Dauphin, duly selected, summoned, &c., who, being all sworn or affirmed according to law, do say March 15, 1870, that they find in favor of the plaintiff for the sum of sixteen thousand one hundred and forty-nine and $\frac{74}{100}$ dollars, ($16,149 74,) and costs of suit.

177 In the supreme court of Pennsylvania in and for the middle district, ss:

THE PITTSBURG, FORT WAYNE AND CHICAGO Railway Company plaintiff in error, & defendant below,
vs.
THE COMMONWEALTH OF PENNSYLVANIA.

Issue writ of error in the above-stated case, being No. 296 of April

T., 1868, to the court of common pleas of Dauphin County. Returnable the third Monday of May next.

J. C. KUNKLE.
J. W. SIMONTON,
Att'y's for Pl'ff' in Error.

To WALLACE DE WITT, Esq.,
Proth'y Middle District.

APRIL 28, 1870.

DAUPHIN COUNTY, *ss:*

J. W. Simonton, attorney for the above-named plaintiff in error, being duly affirmed, saith that the writ of error in this case is not for delay.

J. W. SIMONTON,
Att'y for Pl'ff in Error.

Affirmed & subscribed before me April 28, 1870.

W. DE WITT,
Proth'y.

(Endorsed:) Filed April 28, 1870.

178 In the supreme court of Pennsylvania in and for the middle district, set.

{SEAL OF SUPREME C'T OF PENN'A, MIDDLE DISTRICT.} The Commonwealth of Pennsylvania to the justices of the court of common pleas for the county of Dauphin, greeting:

Because, in the record and process, and in rendering the judgment in a certain plaint which was in our said court before the judges of the same court by our writ, between the Pittsburg, Fort Wayne and Chicago Railroad Company, plaintiff in error, and The Commonwealth of Pennsylvania, (No. 296, April T., 1868, Dauphin common pleas,) defendant in error, as it is said, manifest error hath intervened to the great damage of the said plaintiff in error, as by the complaint of the same plaintiff in error we have received information, we, willing that if any error be therein it should be corrected, and that speedy justice be done to the parties in this part, do command you, that, if judgment, as it is said, be rendered in the said plea, then the record and process and all things touching the same, under your seals, distinctly and openly, you have before the justices of our supreme court of Pennsylvania, at a supreme court to be held at Harrisburg in and for the middle district of said Commonwealth, on the third Monday of May next, and this writ, that, the record, and process aforesaid being inspected, we may further cause to be done what of right and according to our laws and customs ought.

Witness the Honorable James Thompson, chief justice of our said supreme court at Harrisburg, the 28th day of April, in the year of our Lord one thousand eight hundred and seventy, and of the Commonwealth the 93d.

Allowed.

WALLACE DE WITT,
Prothonotary.

179 The record and process and all things touching the same, so full and entire as before us they remain, to the honorable the judges of the

supreme court of The Commonwealth of Pennsylvania, sitting in and for the middle district, we certify and send as within we are commanded.

JNO. J. PEARSON. [L. S.]

(Indorsed:) No. 90. May term, 1870. Supreme court of Pennsylvania, middle district. The Pittsburgh, Fort Wayne and Chicago Railway Company, plaintiff in error, vs. The Commonwealth, defendant in error. Writ of error to the court of common pleas for the county of Dauphin. Returnable the third Monday of May, 1870. Rule on the defendant in error to appear and plead on the return day of the writ.

"N. B. 10 days' notice to the parties or their counsel below is necessary to compel an appearance."

W. DE WITT, *Proth'y.*

KUNKEL & SIMONTON.
Filed in Dauphin common pleas, April 28, 1870.
Filed sup. c't, May 16, 1870.

180 Among the records of the court of common pleas of Dauphin County, Pennsylvania, to April term, 1868, No. 296, it is contained as follows, to wit:

Docket entry.

THE COMMONWEALTH OF PENNSYLVANIA
vs.
THE PITTSBURGH, FORT WAYNE AND and Chicago Railway Company.

Appeal by defendant from the settlement of the auditor general and state treasurer.

March 27, 1868. Appeal and specification of objections filed.
March 31, 1868. Bond filed.
April 3, 1868. Narr. and copy of account filed. Same day, rule on defendant to plead on thirty days' notice, or judgment ex. rule.
April 4, 1868. Defendant pleads "Nil debit."
May, c't, 1868, I. L., May 4, 1868. Continued.
November court, I. L. Continued.
March, adj'd c't, 1869, I. L. Cont'd.
April c't, 1869, I. L., April 23, 1869. Commission to New York for defendant. Same day ex. com. by consent.
May 19, 1869. Depositions filed.
M'ch adj'd c't, 1870, I. L., March 15, 1870. Trial ordered, jury called, came, &c., twelve good and lawful men of the county of Dauphin,
181 duly selected, summoned, &c., who, being all sworn or affirmed according to law, do say—March 15, 1870—that they find in favor of the plaintiff for the sum of sixteen thousand one hundred forty-nine and $\frac{74}{100}$, ($16,149 74,) and costs of suit.
March 30, 1870. Notes and charge filed. Same day judgment on the verdict.
April, 28, 1870. Writ of error from the supreme court received and filed.

SEAL OF THE COURT OF COMMON PLEAS OF DAUPHIN COURT, PA.

Certified from the record.
JOS. H. NISLEY,
Proth'y.

April 29, 1870.

182 *Specifications of error.*

1. The court erred in charging the jury as follows: "No one can read these various enactments without coming to the conclusion that it was the legislative intention to collect a State tax from all creditors of corporations, whether private or municipal, without regard to the residence of the holder of the obligation; and it is equally manifest that this system of retention was designed to meet the case of absentees, as our own citizens were obliged to return their amount of money at interest to the township assessors. If the non-resident holder of such bonds could not be taxed, the most gross frauds would be practiced by colorable transfers to persons out of the State, or by handing over the coupons to such, for presentation to the treasurers."

2. The court erred in charging the jury as follows: "The tax now in controversy, is imposed, by the various statutes cited, on corporation loans; is authorized to be retained by the act of 1864, and must be deducted from the bonds held by non-residents, as well as those residing in the State."

3. The court erred in charging the jury as follows: "It is said, however, that these laws impair the obligation of the contract between the debtor and the creditor. We are unable to see in what particular. All citizens are subject to taxation, either in their persons or their property, or both. Therefore, where they lend money the loan may be taxed, and if the State, by its laws, chooses to make the debtor the collector, he may be ordered to withhold the amount from his obligation. If the creditor is a non-resident of the State his person cannot be taxed, but his money, lent to our citizens or institutions, may be, on account of the protection furnished to his claim, or the property on which it is secured, and the tax be collected through the medium of the debtor. The laws tax the loan as property found here in Pennsylvania, and impose no heavier duty on it than on like property held by our own citizens."

4. The court erred in instructing the jury, as follows: "In the case reviewed in the Supreme Court of the United States," (Northern Central Railway vs. Jackson,) "as in the case now on trial, there was no attempt on the part of Pennsylvania to tax property or rights beyond her jurisdiction; she did not propose to sever the bonds and say this one shall pay a tax to Maryland and that one to Pennsylvania, but she did equal justice to the creditor by saying: You shall pay your pro rata of the three mill tax to us, and no more, rating it according to the length of road in each State. The same is done here. The coupons being payable out of the State, we hold to be unimportant."

183 5. The court erred in charging the jury, as follows: "The negotiable character of these coupons will not exempt them from taxation, although they pass from hand to hand like bank notes. Every person receiving one is bound to know that it is taxable by law. The statutes are public, of which all the world must take notice."

6. The court erred in directing the jury to find a verdict in favor of plaintiff, as follows: "Your verdict will be rendered for sixteen thousand one hundred forty-nine dollars seventy-four cents, and costs of suit."

184 Judgment entered July 7, 1870, as follows, to wit:

And now, to wit, July 7, 1870, this cause came on to be heard; and, on due consideration, it is ordered that the judgment of the court below be affirmed, this court being of the opinion that the rulings of the

learned judge of the court below, complained of in the assignments of error, were in all respects in conformity with law.

Per curiam,

THOMPSON, *C. J.*

185 In the supreme court of Pennsylvania, sitting in and for the middle district of said court, ss:

At a supreme court of the State of Pennsylvania in and for the middle district of said court, at the city of Harrisburg, Penn'a, on the first Monday of May, A. D. 1870—

Present the Honorable James Thompson, chief justice; and John M. Read and George M. Sharswood, justices; and Wallace De Witt, prothonotary of said supreme court—

Among the records of the said the supreme court of Pennsylvania in and for the middle district, to May term, 1870, No. 90, it is contained as follows, to wit:

Docket entries.

THE PITTSBURG, FORT WAYNE & CHICAGO Railway Company, plaintiff in error, & def't below,
vs.
THE COMMONWEALTH OF PENNSYLVANIA, defendant in error, & plaintiff below.

Writ of error to the court of common pleas of Dauphin County, No. 296, April term, 1868.

186 Præcipe for writ of error and affidavit filed April 28th, 1870. Same day writ of error to the court of common pleas of Dauphin County issued; returnable on the third Monday of May, 1870.

May 16, 1870. Assignments of error filed by plaintiff in error. Same day writ of error returned, with record from the court of common pleas of Dauphin County, and filed.

May 21, 1870. Called *called* for argument and argued.

And now, to wit, July 7, 1870, this cause came on to be heard; and, on due consideration thereof, it is ordered that the judgment of the court below be affirmed, this court being of opinion that the rulings of the learned judge of the court below, complained of in the assignments of error, were in all respects in conformity with law.

Per curiam.

THOMPSON, *C. J.*

Petition for writ of error to the Supreme Court of the United States.

Citation to defendant in error.

Writ of error from the Supreme Court of the United States allowed by W. Strong, justice of the Supreme Court of the United States,

187 and bond in the penal sum of thirty-three thousand dollars, approved by W. Strong, justice of the Supreme Court of the United States, received and filed July 16, 1870. Same day copy of writ of error for defendant in error, to wit, the Commonwealth of Pennsylvania, received.

July 28, 1870. Service of citation accepted by the Hon. F. Carroll

Brewster, attorney general of Pennsylvania, & copy of writ of error from the Supreme Court of the United States delivered to him.

{ SEAL OF SUPREME C'T OF PENN'A, MIDDLE DISTRICT. } Certified from the record.

WALLACE DE WITT,
Prothonotary.

188 And now here, on this day, to wit, July 16, 1870, the said The Pittsburg, Fort Wayne and Chicago Railway Company produced to the said supreme court of Pennsylvania here the writ of the United States of America for the correcting of errors of and upon the premises, commanding the record and proceedings aforesaid, of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next, which writ of error is in the words and of the tenor following, to wit:

189 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, set:

The President of the United States to the judges of the supreme court of the State of Pennsylvania, the highest court of law or equity in the said State, greeting:

Because that in the record and process, and also in the rendering of judgment in a suit before you, between the Pittsburg, Fort Wayne and Chicago Railway Company, a corporation of the State of Pennsylvania, plaintiff in error, and The State of Pennsylvania, defendant in error, (No. 90 of the May term, 1870, of the middle district of Pennsylvania,) in which said suit the validity of a statute of the State of Pennsylvania, on the ground of repugnancy to the Constitution of the United States, is said to have been drawn in question, and the decision to have been in favor of the said statute, a manifest error has intervened, to the great damage of the said plaintiff in error, as in their complaint has been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf:

You are hereby commanded that, if judgment thereof be given, then, under your seal, you do distinctly and openly, send the record and process in the suit aforesaid, with all things concerning them, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of De-
190 cember next, in the Supreme Court to be then and there held, that, the record and process aforesaid being inspected, the said Supreme Court may cause to be done therein, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this sixteenth day of July, A. D. one thousand eight hundred and seventy, and in the ninety-fifth year of the independence of the said United States.

[SEAL.]

JOHN B. BEAVER,
Pro. Clerk Cir. C't U. S.

Allowed July 10, 1870.
W. STRONG,
As. Jus. Sup. C. U. S.

(Indorsed:) U. S. Supreme Court. The Pittsburg, Fort Wayne and Chicago Railway Co., plaintiff in error, vs. The State of Pennsylvania,

def't in error. Writ of error. Filed in the office of the prothonotary of the supreme court of Pennsylvania in and for the middle district, July 16, 1870. Wallace De Witt, prothonotary. $2 00 p'd by pl'ff.

191 In pursuance whereof and according to the form and effect of the act of Congress in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things relating to the same, together with the said writ of error, are hereby transmitted to the said Supreme Court accordingly.

192 *Writ of error bond.*

Supreme court of the State of Pennsylvania, middle district.

Know all men by these presents that we, The Pittsburg, Fort Wayne and Chicago Railway Company, and and , are held and firmly bound unto the Commonwealth of Pennsylvania in the sum of thirty-three thousand dollars, to be paid to the said Commonwealth, its certain attorney or assigns; to which payment, well and truly to be made, we bind ourselves and each of us and each of our successors, heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the day of July, A. D. 1870.

The condition of this obligation is such, that whereas the said Commonwealth of Pennsylvania has recovered a judgment in the supreme court of Pennsylvania in and for the middle district, against The Pittsburg, Fort Wayne and Chicago Railway Company, for the sum of $16,149 74 *dollars* and costs, which said judgment was rendered on the seventh day of July, A. D. 1870, and whereas the said The Pitts-
193 burg, Fort Wayne and Chicago Railway Company, in order to obtain a reversal of the same, have sued out a writ of error to the Supreme Court of the United States: Now, therefore, if the above named The Pittsburgh, Fort Wayne and Chicago Railway Company shall prosecute their said writ with effect, and shall answer all costs and damages and pay the said judgment if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

Pittsburg, Fort Wayne and Chicago Ra'w'y Comp'y.
G. W. CASS, *Pres't.*
{ SEAL OF RAILWAY COMPANY. } G. W. CASS,
THO'S D. MESSLER.
Attest: F. M. HUTCHINSON.

Executed and delivered in presence of—
F. M. HUTCHINSON,
W. R. SHELBY.

(Endorsed:) Bond and sureties approved. W. Strong, J. July 16, 1870. Filed in the office of the prothonotary of the supreme court of Pennsylvania in and for the middle district. July 16, 1870. Wallace De Witt, prothonotary.

194 The United States of America to the State of Pennsylvania, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the first

Monday of December next, pursuant to a writ of error issued from the Supreme Court of the United States to the supreme court of Pennsylvania, wherein The Pittsburg, Fort Wayne and Chicago Railway Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, viz, in a suit No. 90 of the May term, 1870, (middle district,) of the said supreme court of Pennsylvania, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William Strong, one of the associate judges of the Supreme Court of the United States, this sixteenth day of July, A. D., 1870.

W. STRONG.

I accept service for defendant in error.

F. CARROLL BREWSTER.
Attorney General.

JULY 28, 1870

(Endorsed:) U. S. Supreme Court. The Pittsburg, Fort Wayne and Chicago Railway Co., plaintiff in error, vs. The State of Pennsylvania, def't in error. Citation. Filed in the office of prothonotary of the supreme court of Pennsylvania in and for the middle district. July 16, 1870. Wallace De Witt, prothonotary.

195 STATE OF PENNSYLVANIA, *ss:*

In testimony that the foregoing, contained on pages one to one hundred & ninety-four, inclusive, is a full, true, and complete copy of the record and proceedings of the supreme court of Pennsylvania, the highest court of law and equity in the state of Pennsylvania, in the case lately depending therein to No. 90 of the May term, 1870, middle district, wherein The Pittsburg, Fort Wayne and Chicago Railway Company was plaintiff in error, and The Commonwealth of Pennsylvania was defendant in error, I have hereunto subscribed my name, and affixed the seal of the said supreme court, this eighteenth day of November, A. D. one thousand eight hundred and seventy.

[SEAL.] ROB'T SNODGRASS.
Prothonotary Sup. C't of Pa., Middle District.

196 Supreme Court of the United States. In error. Of December term, A. D. 1870.

THE PITTSBURG, FORT WAYNE AND CHICAGO Railway Company
v.
THE COMMONWEALTH OF PENNSYLVANIA.

Afterwards, to wit, on the day of December, in this same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said The Pittsburg, Fort Wayne and Chicago Railway Company, by J. W. Simonton, its attorney, and says that, in the record and proceedings aforesaid, there is manifest error in this, to wit:

That the declaration aforesaid, and the matters therein contained are not sufficient in law for the said The Commonwealth of Pennsylvania to have or maintain its aforesaid action thereof against the said The

Pittsburg, Fort Wayne and Chicago Railway Company; that there is also error in this, to wit, that, by the record aforesaid, it appears that the judgment aforesaid given, was given for the said The Commonwealth of Pennsylvania against the said The Pittsburg, Fort Wayne and Chicago Railway Company, whereas, by the law of the land and the Constitution of the United States, the said judgment ought to have
197 been given for the said The Pittsburg, Fort Wayne and Chicago Railway Company against the said The Commonwealth of Pennsylvania; and the said The Pittsburg, Fort Wayne and Chicago Railway Company prays that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that it may be restored to all things which it hath lost by occasion of said judgment; and it will pray, &c.

J. W. SIMONTON,
Att'y for Pl'ff in Error.

(Indorsed:) Supreme Court of the United States, of December term, A. D. 1870. No. 407. The Pittsburg, Fort Wayne and Chicago Railway Company, v. The Commonwealth of Pennsylvania. Assignment of error. Filed 14th December, 1870.

(Indorsement on cover:) No. 407. The Pittsburg, Fort Wayne and Chicago Railway Company, plaintiff in error, vs. The State of Pennsylvania. Pennsylvania sup. court. Filed 14th December, 1870.

Supreme Court of the United States.

NO. 407 DECEMBER TERM, 1870.

THE PITTSBURG, FORT WAYNE AND CHICAGO RAILWAY COMPANY,
Plaintiff in Error,

vs.

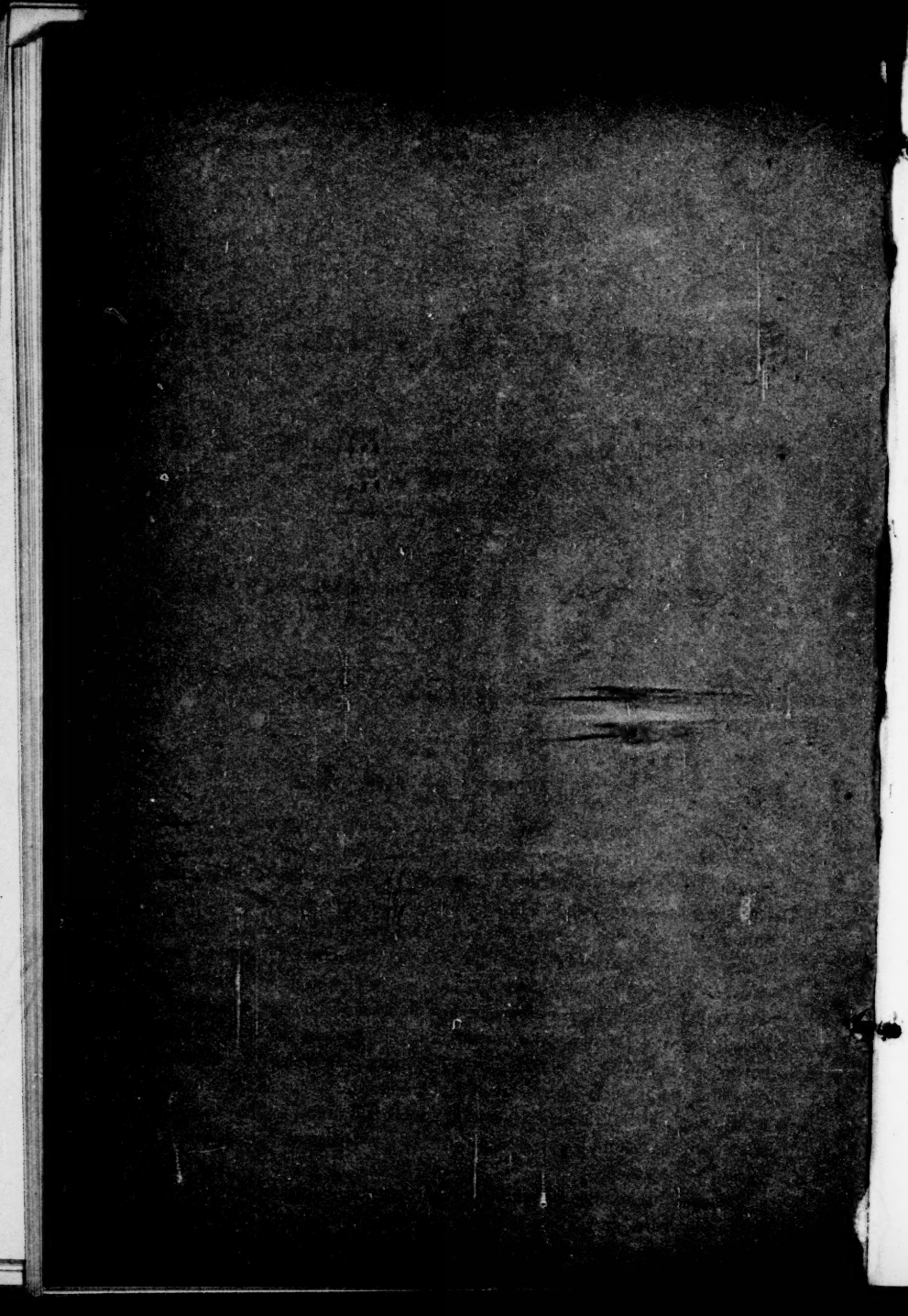
THE COMMONWEALTH OF PENNSYLVANIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

Brief on behalf of the Plaintiff in Error.

BY

J. W. SIMONTON,
Counsel.



Supreme Court of the United States.

THE PITTSBURG, FORT WAYNE AND CHICAGO RAILWAY COMPANY,
Plaintiff in Error,

vs.

THE COMMONWEALTH OF PENNSYLVANIA.

In Error to the Supreme Court of the State of Pennsylvania.

STATEMENT OF THE CASE.

This case is brought here by a writ of error directed to the Supreme Court of the State of Pennsylvania, which is the highest court of law in the State, to bring up for review a judgment of that court, affirming the validity of a statute of Pennsylvania which was alleged to be repugnant to the Constitution of the United States. The case originated as follows:

The Pittsburg, Fort Wayne and Chicago Railway Company is a corporation chartered by the States of Pennsylvania, Ohio, Indiana and Illinois, owning and operating, under the authority and powers granted to it by these States, a Railway four hundred and sixty-nine miles in length, forty-seven miles of which, beginning at Pittsburg, are within the State of Pennsylvania, from the western line of which it extends across Ohio and Indiana to Chicago, in Illinois. Its funded debt amounted to about $13,000,000 when the statute of Pennsylvania, which gave rise to the present controversy, was passed.

This statute, which is entitled "An Act imposing additional taxes for State purposes, and to abolish the revenue board," will be found at page 218 of the pamphlet laws of Pennsylvania for 1864, and in Brightly's Pur-

don's Digest, p. 1378, *et seq.*, pl. 2-8. Its third section, which is the only one material to this case, is as follows:

"Every president, treasurer, cashier, or other officer of any company incorporated, or that may hereafter be incorporated, which pays interest to its depositors, bondholders, or other creditors, upon which by the laws of the Commonwealth a State tax is imposed, shall, before payment of the same, retain from said depositors, bondholders, or other creditors, the amount of State tax imposed by existing laws, and shall pay over the same to the State Treasurer, and that all the laws regulating the mode of such payment in regard to treasurers of counties, cities and boroughs be, and the same are, extended to the financial officers thereof; and they are hereby required to collect and pay over the taxes due to the State on such payments of interest as provided in this section to be done by officers of incorporated companies; and in case of any officer neglecting or refusing to retain the same, he shall become personally liable for the amount."

It will be observed that this section does not *impose* a tax, but merely provides a method of *collecting* one already *imposed*; and, to understand its full scope and operation, reference must be made to the following sections of acts of Assembly of the State of Pennsylvania which were in force when the act of April 30, 1864, was passed:

"All real estate, to wit, houses, lands, lots of ground, ground-rents, mills, and manufactories of all kinds; furnaces, forges, bloomeries, distilleries, sugar-houses, malt houses, breweries, tan-yards, fisheries and ferries, wharves, and all other real estate not exempt by law from taxation; also, all personal estate, to wit, horses, mares, geldings, mules, and neat cattle over the age of four years; *also, all mortgages, money owing by solvent debtors, whether by promissory note, penal or single bill, bond or judgment;* also, all articles of agreement, and accounts bearing interest, owned or possessed by any person or persons whatever, except notes or bills for work or labor done and bank notes; also, all shares or stock in any bank, institution or company now or hereafter incorporated by or in pursuance of any law of this Commonwealth, or any other State or government, and on all shares of stock or weekly deposits in any unincorporated saving fund institution, and all public loans or stocks whatsoever, except those issued by this Commonwealth, and all money loaned or invested on interest in any other State," &c., &c.— * * * * "shall be valued and assessed for taxation for the purposes in this act mentioned, and for all State and county purposes whatsoever." Act of April 29, 1844, section 32, Brightly's Purdon, p. 949, pl. 497.

"The county commissioners of each and every county in this Commonwealth shall be, and they are hereby required annually, at the time of making county rates and levies, to assess for the use of the Commonwealth

upon" (the various subjects of taxation enumerated;) "and upon all other property heretofore made taxable for State purposes, or that are made so by the 32d section of this act, three mills on every dollar of the value thereof." Same act, section 34; Brightly's Purdon, p. 950, P. L. 1844, 499.

(By the 86th section of the act of May 18th, 1857, P. L., 571, the tax of three mills was reduced to two and a half mills; but by the 6th section of the act of May 16th, 1861, P. L., p. 767, an addition of one-half mill to the two and half mills was made.)

Under these acts the Supreme Court of the State of Pennsylvania held (in the case of Maltby *vs.* The Reading and Columbia Railroad Company, 2 P. F. S., 140) that either "money owing by solvent debtors, whether by promissory note, penal or single bill, bond or judgment," or "all public loans or stocks whatsoever, except those issued by the Commonwealth,"—both of which are enumerated as subjects of taxation in the act of April 29th, 1844,—included the bonds of a Pennsylvania corporation, whether held by citizens of Pennsylvania or by citizens and residents of another State or of a foreign country, and that such bonds were taxable as the property of the holders at the rate of three mills on every dollar of the value thereof. As reference is made—as well in the opinion of the court in Maltby's case as in the opinion of the court before which the present case was originally heard (see printed record, p. 112)—to an act of May 1st, 1854, that act is here inserted so that the court may have before it all the Pennsylvania legislation in reference to the taxability of the money due from corporations to the holders of their bonds.

"AN ACT

"To exempt certain loans and bonds from taxation.

"SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same*, That all certificates of loan now issued, or which may be hereafter issued, by the city of Philadelphia or any of the incorporated districts of the county of Philadelphia, in payment of subscriptions already made or which may be hereafter made by the municipal authorities of said city or incorporated districts to the capital stock of any railroad company, and all bonds or certificates of loan of any railroad company incorporated by this Commonwealth, be and the same shall be liable to taxation for State purposes only." Pamphlet laws of 1854, p. 535.

This act—although evidently intended not to impose, but to remove, a tax—must be considered as recognizing the previous taxability, when held by residents of the State, of the bonds or certificates of loans to which it refers.

Maltby's case also decided that the tax which was to be deducted under

the third section of the act of April 30th, 1864, from the interest paid by corporations, was the tax upon the *principal* of the bonds, imposed under the act of 1844. "The tax referred to as the tax to be retained and paid over to the State Treasurer," said Woodward, C. J., p. 148, "is a tax upon interest accruing to bondholders or other creditors. But the three-mill tax is imposed not on the interest but on the principal of the plaintiff's bond. Here is a discrepancy undoubtedly, but it is more verbal than substantial. Taking the act of 1864 in connection with the prior acts to which I have referred, and reading them as parts of a legislative system for aiding the revenues of the Commonwealth, they amount to this and no more, that the three-mill tax shall be assessed upon the par value of the corporation loan, and shall be retained by the corporation officers out of the accruing interest thereon."

It is, therefore, clear that the Supreme Court of Pennsylvania has interpreted the act of 1864 as requiring Pennsylvania corporations to withhold an annual tax of three mills on each dollar of the principal of their bonds from the interest payable thereon, no matter what the citizenship or domicile of the bondholders may be; and, in fact, such was the view taken by this court in The Railroad Company *vs.* Jackson, 7 Wallace, 262, of the effect of the decision in Maltby *vs.* The Railroad Company. As a tax of three mills on each dollar of one thousand dollars would amount to three dollars, the deduction required from the annual interest of a $1,000 bond paying six per cent. interest, to meet this tax, would be just five per cent.; and the accounting officers of the State seem to have adopted the practice of estimating the tax on the principal of a bond as equal to five per cent. of the interest of the bond, irrespective of the rate of interest.

Such being the state of the law, as established by the Supreme Court of Pennsylvania, the Auditor General and Treasurer of that State settled an account, on the 27th day of January, 1868, against the Pittsburg, Fort Wayne and Chicago Railway Company, by which that company was charged, under the act of April 30, 1864, with $14,789 01 as a tax of three mills on each dollar of 50,469 parts of its bonded indebtedness, from April 30, 1864, to December 31, 1867, inclusive, and was credited with $278 90, as an allowance or commission to the treasurer of the company, (see printed record, p. 7,) thus making a balance against the company of $14,501 11. The fraction—50,469—was assumed as representing "the proportion of the road (of the P., Ft. W. & C. Co.) within the State of Pennsylvania."—*Ibid.* The company having appealed from this settlement to the court of common pleas of Dauphin county, the Commonwealth of Pennsylvania, according to the practice in such cases, filed a declaration in that court on the stated or settled account, to which the railroad company pleaded "*nil debet*," (see printed record, pp. 3, 4 and 5,) and the issue thus formed was tried in the

court of common pleas of Dauphin county, before the president judge, Hon. John J. Pearson, and a jury.

It appeared from the uncontradicted evidence that the aggregate funded debt of the company was thirteen millions and sixty-three thousand ($13,063,000) dollars; that the bonds were issued in 1862, and were negotiated and payable, as to principal and interest, in the city of New York; that the interest was the New York rate—seven per cent.—and that much the greater part of them were and always had been held and owned by persons who were neither citizens nor residents of the State of Pennsylvania, only a very small proportion of the whole amount of the bonds being, or having been, at any time, held and owned by residents or citizens of Pennsylvania.

It also appeared in evidence that over twelve million ($12,000,000) dollars of the bonds were secured by mortgages, executed March 1, 1862, which were and are a lien upon the entire line of the railway of said company, with its franchises and fixtures, extending from Pittsburg, Pennsylvania, through Ohio and Indiana to Chicago, Illinois; and that said mortgages contain each a power of sale to trustees therein named, authorizing them, in default of the payment of principal or interest, to sell, at public auction, the said railway, with its franchises, fixtures and appurtenances, in the city of New York, or at such place as they may select within any of the States in which any part of said road is situated; and that more than five hundred thousand ($500,000) dollars of said bonds were not secured by any mortgage or other lien.—See printed record, pp. 67, 81, 94, and 107 to 110.

The learned president of the Common Pleas, following the decision of the Supreme Court of Pennsylvania, in Maltby vs. The Railroad Company, instructed the jury that the defendants were liable for the whole amount of tax claimed, with interest at the rate of six per cent., from the expiration of three months from the date of the settlement.

In answer to the allegation that the act of 1864 was in conflict with the Constitution of the United States, and that the Legislature could not impose this tax on the non-resident bondholder, under the facts of this case, since by so doing they would be taxing property and interests beyond their jurisdiction, the learned judge said, referring to the case of The Railroad Company vs. Jackson, 7 Wall., 262:

"In the case reviewed in the Supreme Court of the United States, as in the case now on trial, there was no attempt on the part of Pennsylvania to tax property or rights beyond her jurisdiction, she did not propose to sever the bonds and say this one shall pay a tax to Maryland and that one to Pennsylvania, but she did equal justice to the creditor by saying: You shall pay your *pro rata* of the three mill tax to us, and no more, rating it

according to the length of road in each State. The same is done here."—See printed record, p. 114.

And in answer to the point that the law, as applied to this case, was repugnant to the Constitution of the United States, because it impaired the obligation of the contract between the non-resident bondholder and the corporation, the learned judge said:

"It is said, however, that these laws impair the obligation of the contract between the debtor and the creditor. We are unable to see in what particular. All citizens are subject to taxation, either in their persons or their property, or both. Therefore, where they lend money the loan may be taxed, and if the State, by its laws, chooses to make the debtor the collector, he may be ordered to withhold the amount from his obligation. If the creditor is a non-resident of the State his person cannot be taxed, but his money, lent to our citizens or institutions, may be, on account of the protection furnished to his claim or the property on which it is secured, and the tax be collected through the medium of the debtor. The laws tax the loan as property found here in Pennsylvania, and impose no heavier duty on it than on like property held by our own citizens. See Maltby vs. The Railroad Company, already cited. Hood's estate, 9 Harris, 116."—See printed record, p. 112.

The jury rendered a verdict for the plaintiff—the Commonwealth—in the sum of $16,149 74, on which judgment was afterwards entered; this judgment was removed to the Supreme Court of Pennsylvania, the highest court of law in the State, by writ of error, where it was assigned as error, among other things, that

2. The Court erred in charging the jury as follows: "The tax now in controversy is imposed, by the various statutes cited, on corporation loans; is authorized to be retained by the act of 1864, and must be deducted from the bonds held by non-residents, as well as those residing in the State."

3. In charging the jury as follows: "It is said, however, that these laws impair the obligation of the contract between the debtor and the creditor. We are unable to see in what particular. All citizens are subject to taxation, either in their persons or their property, or both. Therefore, where they lend money the loan may be taxed; and if the State, by its laws, chooses to make the debtor the collector, he may be ordered to withhold the amount from his obligation. If the creditor is a non-resident of the State his person cannot be taxed, but his money, lent to our citizens or institutions, may be, on account of the protection furnished to his claim, or the property on which it is secured, and the tax be collected through the medium of the debtor. The laws tax the loan as property found here in

Pennsylvania, and impose no heavier duty on it than on like property held by our own citizens."

In charging the jury as follows: "In the case reviewed in the Supreme Court of the United States," (Northern Central Railway vs. Jackson,) "as in the case now on trial, there was no attempt on the part of Pennsylvania to tax property or rights beyond her jurisdiction; she did not propose to sever the bonds and say this one shall pay a tax to Maryland and that one to Pennsylvania, but she did equal justice to the creditor by saying: You shall pay your *pro rata* of the three mill tax to us, and no more, rating it according to the length of road in each State. The same is done here. The coupons being payable out of the State, we hold to be unimportant."—See printed record, p. 118.

The judgment of the Court of Common Pleas was affirmed in the Supreme Court, the entry of the judgment of affirmance being as follows: "And now, to wit: July 7, 1870, this cause came on to be heard, and, on due consideration, it is ordered that the judgment of the court below be affirmed, this court being of the opinion that the rulings of the learned judge of the court below, complained of in the assignments of error, were in all respects in conformity with law," whereupon the cause was brought unto this court by writ of error.

ASSIGNMENTS OF ERROR.

1. The Supreme Court of the State of Pennsylvania erred in affirming the judgment of the court below, as follows:

"And now, to wit: July 7, 1870, this cause came on to be heard, and on due consideration, it is ordered that the judgment of the court below be affirmed, this court being of the opinion that the rulings of the learned judge of the court below, complained of in the assignments of error, were, in all respects, in conformity with law."

2. The said Supreme Court erred in not sustaining the fourth error assigned in said court, which was that the court below erred in charging the jury, as follows:

"In the case reviewed in the Supreme Court of the United States," (Northern Central Railway vs. Jackson,) "as in the case now on trial, there was no attempt on the part of Pennsylvania to tax property or rights beyond her jurisdiction; she did not propose to sever the bonds and say this one shall pay a tax to Maryland and that one to Pennsylvania, but she did equal justice to the creditor by saying: You shall pay your *pro rata* of the three mill tax to us, and no more, rating it according to the length of road in each State. The same is done here. The coupons being payable out of the State, we hold to be unimportant."

3. The said Supreme Court erred in not sustaining the third error assigned in said court, which was that the court below erred in charging the jury, as follows:

"It is said, however, that these laws impair the obligation of the contract between the debtor and the creditor. We are unable to see in what particular. All citizens are subject to taxation, either in their persons or their property, or both. Therefore, where they lend money the loan may be taxed, and if the State, by its laws, chooses to make the debtor the collector, he may be ordered to withhold the amount from his obligation. If the creditor is a non-resident of the State his person cannot be taxed, but his money, lent to our citizens or institutions, may be, on account of the protection furnished to his claim, or the property on which it is secured, and the tax be collected through the medium of the debtor. The laws tax the loan as property found here in Pennsylvania, and impose no heavier duty on it than on like property held by our own citizens."

4. The said Supreme Court erred in not sustaining the second error assigned in said court, which was that the court below erred in charging the jury, as follows:

"The tax now in controversy, is imposed, by the various statutes cited, on corporation loans, is authorized to be retained by the act of 1864, and must be deducted from the bonds held by non-residents, as well as those residing in the State."

5. The said Supreme Court erred in not sustaining the fifth error assigned in said court, which was that the court below erred in charging the jury, as follows:

"The negotiable character of these coupons will not exempt them from taxation, although they pass from hand to hand like bank notes. Every person receiving one is bound to know that it is taxable by law. The statutes are public, of which all the world must take notice."

BRIEF OF ARGUMENT.

The Supreme Court of the State of Pennsylvania, the highest court of law in the State, affirming the judgment of the Court of Common Pleas of Dauphin County, have held that the third section of the act of April 30, 1864, given in full in the statement of the case above, is, when applied to the facts and circumstances of this case, as above detailed, a valid and constitutional exercise of the taxing power of the State, and does not impair the obligation of the contract between the non-resident bondholder and the railroad corporation, plaintiff in error.

Believing that there is error in their judgment, and that the act in question, as construed and applied, is repugnant to the Constitution of the United States, we have brought the case here on a writ of error to said Supreme Court, and we contend that its judgment should be reversed:

FIRST.—*For the reasons given in the case of the Railroad Company vs. Jackson, where the precise point involved here was decided in our favor by this court.*

The statement of the facts of this case, given above, shows that it is, in all essential particulars, identical with the case of The Railroad Company vs. Jackson, 7 Wallace, 262. The only difference is that, in this case, the imposition of the tax would present a more marked instance of giving effect to the acts of the Legislature of Pennsylvania upon property and interests lying beyond her jurisdiction, for the reason that this company was incorporated by the Legislatures of four States, instead of two, as in that case, and its railway, instead of extending only from a point in one State to a point in an adjoining one, as there, extends from a point in one State entirely across two other States to a point in a fourth, in a continuous line, as one road, and the bonds claimed to be taxed are secured by mortgages upon the whole line of the road, its franchises and fixtures, including alike the portion lying in each of the four States; no part of the line of the road being liable for the payment of any specified part or quantity of the bonds taxed, but each part being liable for the whole amount. The tax, too, which is claimed in this case, is the same tax claimed in that; the law under which it is claimed, being the very same law then in question.

This court, in the Jackson case, say: "The ground upon which we place the objection, in this case, to the tax is, in brief, that the bonds, amounting to $2,500,000, of which those in question are a part, were issued by this company upon the credit of the line of road, its franchises and fixtures extending from Baltimore to Sunbury, a given portion of which line lies within the jurisdiction of the State of Maryland. * * * * The security, therefore, pledged and bound for the payment of them and of the

interest, embraces this Maryland portion of the road; and in case of a failure to pay the principal or interest, this portion, with its franchises and fixtures, would be liable to sale in satisfaction of the bonds and interest."

"Now, it is apparent, if the State of Pennsylvania is at liberty to tax these bonds, that, to the extent of this Maryland portion of the road, she is taxing property and interests beyond her jurisdiction. This portion avails her tax-roll as effectually as if it was situate within her own limits. The Maryland portion is not liable for the payment of any specified part, or quantity, of these bonds thus taxed, but is liable, with all its interests, for the whole amount, the same as that portion of the road within the State of Pennsylvania. The bonds were an issue in the usual way, by the Northern Central Railway Company, and the security given by mortgage on the entire line of the road. No portion of the bonds belong to one part more than to another. No severance was made of the bonds, and, therefore, none can be made, in the taxation, with reference to the line within the respective jurisdictions of the States. If the tax is permitted as it respects one bond, it must be as it respects all."

"Again, if Pennsylvania can tax these bonds, upon the same principle Maryland can tax them. This is too apparent to require argument. The only difference in the two cases is, that the line of the road is longer within the limits of the former than within the latter. Her tax would be a more marked one beyond the jurisdiction of the State, as the property and interests outside of its limits would be larger." * * * * *

* * * * * * * *

"Our conclusion on this branch of the case is, that to permit the deduction of the tax from the coupons in question, would be giving effect to the acts of the Legislature of Pennsylvania upon property and interests lying beyond her jurisdiction."

We have only to strike out "Maryland" and insert "Ohio, Indiana and Illinois," and change the name of the case, when every word of the opinion in the Jackson case will apply as well to this case as if it had been written for it; though the facts here illustrate, more strikingly, the attempt of the Legislature of Pennsylvania to pass beyond the limits of its jurisdiction, which was pointed out and condemned there. And this court has said that the adjudications of a State court are no more to control its judgment, in a cause brought here from such court, than if brought from a Circuit Court of the United States, and that its duty depends on the question raised, and not on the channel through which the case comes.—Butz *vs.* City of Muscatine, 8 Wall., 575.

We, therefore, look upon the case of The Railroad Company vs. Jackson, as an authoritative decision of the question involved in this case; and it is

only because the Supreme Court of Pennsylvania have thought proper, notwithstanding that decision, to adhere to their own prior case of Maltby vs. The Reading and Columbia Railroad Company, 2 P. F. Smith—52 Penna. State R.—140, that we feel it to be our duty to argue it further, and to call the attention of this court to other reasons why, as we think, the judgment should be reversed, in addition to the one sufficient ground upon which the decision in the Jackson case is put. We contend then, further, that the judgment of the State Court should be reversed:

SECOND.—*Because, for other reasons in addition to those given by this court in the Jackson case, the said act of the Legislature of Pennsylvania, as applied to the facts and circumstances of this case, is unconstitutional and void, in that it impairs the obligation of the contract between the non-resident bondholder and the corporation plaintiff in error.*

It was said by Mr. Justice Nelson, in delivering the opinion of the court in the latter case, "The tax upon the promissory note or bond given by the resident debtor, and the withholding of the amount from the interest due to the non-resident, would seem to be a tax upon such non-resident. It is not a tax of the money lent, because that belongs to the resident debtor, for which he is taxable; it is a tax on the security, the bond, which is in the hands of the non-resident holder."

This is shown to be so by the very terms of the law under which the tax is claimed. It provides, that "every president, treasurer, cashier, or other officer of any company incorporated, or that may hereafter be incorporated, which pays interest to its depositors, bondholders or other creditors, upon which, by the laws of the Commonwealth, a State tax is imposed, *shall, before payment of the same, retain from said depositors, bondholders or other creditors, the amount of State tax imposed by existing laws*, and shall pay over the same to the State Treasurer."

And it has been so construed by the Supreme Court of Pennsylvania, in Clopton vs. The Philadelphia and Reading Railroad Company, 4 P. F. Smith—54 Penn'a State R.—356.

The tax being, then, a charge upon the holder of the bond, and exacted in respect of the bond held by him, the question is: Has the State of Pennsylvania a right to impose it upon non-residents of the State, who are and became holders of the bonds of the plaintiff in error, at the time and in the manner above detailed.

We think this question should be answered in the negative.

We do not doubt the power or right of the State to impose such taxes as she may see fit upon all railroads or parts of railroads which lie within her borders, or upon the franchises of all railroad companies chartered by

the State, by any general law which shall apply alike to all according to their value.

The question is not one of the right or power of the State to raise such revenue as she may need from the railroad property or franchises within her limits; no one doubts that she can do this, and neither her right or her power so to do would be affected by a reversal of the judgment in this case.

But it is a question of her power and her right to levy a contribution or tax upon the contracts or choses in action of citizens of other States, by requiring the officers of the debtor corporation to withhold a part of the interest stipulated to be paid to such citizens of other States, and to pay the same into the Treasury of the State.

This we contend she cannot do upon any legal principle of taxation, and the law if so construed and applied would impair the obligation of the contract between the railroad company and such citizens and residents of other States, and is therefore repugnant to the Constitution of the United States and null and void.

The import of the terms "obligation of a contract" has been thus defined and illustrated by this court: "The obligation of a contract consists in its binding force on the party who makes it. This depends on the laws in existence when it is made; these are necessarily referred to in all contracts, and form a part of them as the measure of the obligation to perform them by the one party, and the right acquired by the other. * * * If any subsequent law affect to diminish the duty, or to impair the right, it necessarily bears on the obligation of the contract in favor of one party to the injury of the other; hence, any law, which in its operation, amounts to a denial or obstruction of the rights accruing by a contract, * * * is directly obnoxious to the prohibition of the Constitution." M'Cracken vs. Hayward, 2 How., 612.

And Judge Story has said, "It is the civil obligation of contracts which it (the Constitution) is designed to reach; that is, the obligation which is recognized by, and results from the law of the State in which it is made. * * * * When it does not fall within the predicament of being either illegal or void, its obligatory force is co-extensive with its stipulations." Story on Const, § 1374.

Woodward, C. J., in Maltby vs. the Reading and Columbia Railroad Company, after suggesting that the question, "how far modern tax laws shall be permitted to impair and alter private contracts is a great question, which must be decided ultimately by the Supreme Court of the United States," adds: "Perhaps the sound conclusion is that governmental taxation, a thing always to be anticipated when contracts are made, does not impair the obligation of contracts within the meaning of the constitutional inhibition."

This we believe to be the "sound conclusion" where both parties to the contract are within the jurisdiction of the taxing power. The case put by the Chief Justice, that "a section of the excise law of 1864 authorized manufacturers who had existing contracts for the delivery of manufactured goods at the date of the law, to add the increased duties to the contract price, and collect them from the vendee, and this is now done," is not, we think, open to objection, as he seems to intimate; because both the vendor and the vendee being within the jurisdiction of the United States, it did not impair the obligation of the contract, but only added to it the duty, on the part of the vendor, to act as collector of the excise tax, and on the part of the vendee to pay it. The United States had a clear right and power to tax him, and the manner in which they did it was a matter of indifference. This is clearly pointed out and made the ground of the decision in Haight vs. Railroad Company, 6 Wallace, 15. Besides, the United States are not prohibited from passing laws impairing the obligation of contracts. This prohibition applies only to the States.

But when the contract is made, and is to be executed, out of the jurisdiction of the power claiming the right to tax, and the party to the contract whose interest in it is sought to be taxed, resides without the jurisdiction, and does not need to ask the aid of the State courts to enforce his contract, we submit that this principle does not apply, and that the obligation of such a contract is as much protected by the Constitution from being impaired by taxation as in any other way.

The provision of the Constitution of the United States is, that "no State shall pass *any* law impairing the obligation of contracts," and as has been said—Sedgwick on Stat. and Const. Law, p. 169:

"The clause in the Constitution referring to all contracts without exception, and it being settled that this includes executory as well as executed contracts, no difficulty seems to have presented itself in relation to the true construction of the clause in regard to agreements of a private character."

"All private contracts, in the ordinary legal application of that phrase, are understood to be embraced by it. If an agreement is such that if executory it can be enforced in a court of justice, or that if executed a remedy can be sought for its violation or infringement, then it is a contract to be protected, within the meaning of the constitutional clause."

And defining and illustrating the sense in which the term *impairing* the obligation of a contract is used in the Constitution, Judge Story says: "It is perfectly clear that any law which enlarges, abridges, or in any manner changes the intention of the parties, resulting from the stipulations in the contract, necessarily impairs it. The manner or degree in which this change

is effected, can in no respect influence the conclusion; for whether the law affect the validity, the construction, the duration, the discharge or the evidence of the contract, it impairs its obligation, though it may not do so to the same extent in all the supposed cases. Any deviation from its terms by postponing or accelerating the period of performance which it prescribes; imposing conditions not expressed in the contract, or dispensing with the performance of those which are a part of the contract, however minute or apparently immaterial in their effect upon it, impairs its obligation. *A fortiori*, a law which makes the contract wholly invalid, or extinguishes, or releases it, is a law impairing it." 3 Story on Const. § 1379.

A tax law, therefore, which does actually impair the obligation of a contract is as certainly prohibited by this provision as any other law, and the only question in any given case, is, was the party whose rights under a contract are affected by a tax law, so situated with relation to the law making power, that he was bound to contract with reference to the existence or passage of such a law?

The principle we believe to be this: All citizens of any given State, in entering into contracts to be performed within such State, are bound to have regard to the laws of the State, then in force, which relate to or bear upon the subject; as well as to the fact that there are certain classes of laws, such as tax laws and police laws, which may be constitutionally applied to prior contracts; but a citizen of one State, entering into a contract lawful in his own State, which is to be performed there, is not bound in contracting, to have any reference to the laws of another State, present or future, whether they be tax laws or laws of any other kind.

An illustration of this principle is given in the effect of State insolvent laws. Thus, citizens of a given State, entering into a contract to be performed in such State, are bound by the fact of the existence of an insolvent law; but one who is a citizen of another State, even though contracting in the State where such law exists, with one of its citizens, is not bound to have any regard to such law and his rights cannot be effected by it, owing to the clause in the Constitution of the United States prohibiting any State from passing any law impairing the obligation of contracts. The State law has no jurisdiction over him, and his contract is not affected by it, because he is not a citizen of such State.—Ogden *vs.* Sanders, 12 Wheat., 213. Baldwin *vs.* Hale, 1 Wallace, 223. Story, Conflict of laws, (4 ed.,) sec. 341.

Judge Story says: "Under the peculiar structure of the Constitution of the United States, prohibiting the States from passing laws impairing the obligation of contracts, it has been decided that a discharge under insolvent laws of the State where the contract was made, will not operate as a discharge of the contract, unless it was made between citizens of the same

State; it cannot, therefore, discharge a contract made with a citizen of another State."

He also lays it down as a maxim—Conflict of Laws, section 20—"That no State or nation can by its laws directly affect or bind property out of its own territory, or bind persons not residents therein, whether they are natural born subjects or others." And see sections 17, 18 and 19.

This tax law does attempt to bind and affect both persons and property out of its jurisdiction.

It is not, as we have already seen, a tax upon the railroad company, nor is it a tax upon their property, nor measured by its value. The value of the property of a given company has nothing to do with the amount of the tax to be collected by it from the bond-holders.

It is only when viewed in relation to the contract of the bondholder that the properties of a tax can be ascribed to this levy. It is laid rateably upon the value of his contract, this value being determined by what it yields him. If then it is a tax at all, it is a tax upon his contract, upon its value, its proceeds.

The law then is aimed directly at the contract, and in effect, as well as in terms, it says to the debtor, "you shall not perform your contract according to its stipulations," and to the bondholder, "you shall receive a part only, and not the whole of that for which you contracted."

This would be unobjectionable, for the reason already stated, if both parties to the contract were within the jurisdiction, for it would be all the same, in fact and in principle, to retain it from the creditor, as to collect it from him after it was paid to him, and in either case he would receive credit for its payment—Haight *vs.* Railroad Company, above cited. The objection arises because of preventing him from receiving his stipulated interest, when if he did receive it, there would confessedly be neither right nor power to collect it from him as a tax.

The law could not be enforced directly against the bondholder, because he is not within the jurisdiction, nor against his property, for neither is it within the jurisdiction; hence there is no penalty imposed upon him for failing to comply with the law, nor any attempt at, or provision for, enforcing it against him, or against his property. But the debtor, being within the jurisdiction and power of the law, is required, on pain of having to pay the tax himself, with a penalty added, to violate his contract with the bondholder and force him to take a part of the interest due him in full satisfaction of the whole. This we contend is "impairing the obligation of the contract," between the company and the bondholder, and taxing persons and things beyond the jurisdiction of the State.

We claim, in short, that the bondholder, residing and contracting out of

the State, and the place where the contract is to be performed being without the State, and being able to enforce his contract in the courts of the United States, without appealing to the courts of the State, can neither be expected nor required to anticipate tax laws of this State, when making his contract, and that therefore the principle stated by C. J. Woodward, which is undoubtedly sound when applied to citizens of the State, does not apply to him, and this tax law, which attempts to force him to accept part performance of his contract in lieu of full performance, would, if carried into effect, impair the obligation of his contract within the meaning of the constitutional inhibition, and is therefore, as to him, null and void.

But it is said that though the bondholder is beyond the jurisdiction of the State, his property is within it, and indeed, this is the principal ground upon which the decision in the case of Maltby *vs.* the Reading Railroad Company is put by the court. They say "there must be jurisdiction over either the property or person of the owner, else the power cannot be exercised; but where the property is within our jurisdiction, and enjoys the protection of our State government, it is justly taxable, and it is of no moment that the owner who is required to pay the tax resides elsewhere."

We think this position rests upon a confusion of ideas and a confounding of things which are, in their nature, entirely distinct and separate, and that there is no proper sense in which the non-resident bondholder, as such, can be said to have any property within the State.

He does not own the property or the franchises of the corporation debtor, nor anything that has an actual *situs* within the State. The property mortgaged belongs entirely to the debtor, who has complete control over it, and it seems to us to involve a contradiction in terms, to speak of it as belonging in any sense to the non-resident creditor.

It is certainly as well settled as anything can be, in Pennsylvania, whatever the doctrine may be elsewhere, that a mortgage is only a lien or encumbrance on the land mortgaged, and that the mortgagee has no estate in the land. Thus, in Wilson *vs.* Shoenberger's executors, 7 Casey, 299, it is said by Woodward, J.: "It is the settled law of the Pennsylvania mortgage that though in form a conveyance of title, it is in reality, both at law and in equity, only a security for the payment of money or performance of other collateral contract." And in Edmondson *vs.* Nicholson, 10 Harris, 79, Lewis, J., says: "The mortgagee has no estate in the land. His mortgage is nothing but a security for a debt. It is only an incumbrance." So in Witmer's Appeal, 9 Wright, 463, it is said: "A mortgagee has no estate in the land, any more than a judgment creditor. Both have liens upon it, and no more than liens. This was expressly asserted in Assay *vs.* Hoover, 5 Barr, 35, and has been substantially, if not expressly, affirmed in many

cases. Rickert *vs.* Maderia, 1 Rawle, 228; Edmondson *vs.* Nicholson, 10 Harris ,79; Wilson *vs.* Shoenberger's executors, 7 Casey, 299."

And although in Pennsylvania all possible contingent titles to land, accompanied with an estate, property, or real interest in the land, are subject to levy and sale on execution; Humphreys *vs.* Humphreys, 1 Yeates, 429; Sharpe *vs.* Sharpe, 12 Sargeant & Rawle, 12; Streaper *vs.* Fisher, 1 Rawle, 162; it has been settled, on the principle of want of interest or estate in the mortgagee, that the mortgaged premises cannot be taken in execution for his debt.—Rickert *vs.* Maderia, 1 Rawle, 329.

In the latter case, the court say, "a mortgage must be considered either as a *chose in action*, or as giving title to the land, and vesting a real interest in the mortgagee. In the latter case it would be liable to execution; in the former it would not, as it would fall within the same reason as a judgment bond or simple contract. If we should consider the interest of the mortgagee as a real interest, we must carry the principle out and subject it to a dower, and to the lien of a judgment. The same objections which may be urged against one judgment being a lien on another judgment, will apply with equal force to the doctrine that a judgment is a lien on a mortgage. That a mortgage is but a *chose in action*, a mere evidence of debt, is apparent from the whole current of decisions."—p. 328.

This being the nature of the mortgage, it surely cannot be said that the non-resident holder and owner of a bond secured by mortgage in Pennsylvania owns any real estate there.

Does he, then, own any personal property within the State? He does not own the money lent, for that, as has been truly said by Mr. Justice Nelson, in Jackson *vs.* the Railroad Company, "belongs to the resident debtor, for which he is taxable." If, then, he owns neither the land bound nor the money lent, but merely the bond and mortgage, the choses in action which follow the person of the owner, and are actually in his possession without the State, we submit that he owns nothing within the jurisdiction of the State. Neither does he need, as has been argued, to invoke the aid of the courts of the State to reap the fruits of his security in case of the non-payment of the interest or principal of the bonds. By the express terms of the mortgages given by the plaintiff in error, the trustees therein named are authorized to sell the mortgaged premises, in default of payment, at a place outside of the State of Pennsylvania. See printed record, pp. 73-86-98.—And the courts of the United States have ample jurisdiction and power to give the non-resident bondholder all the judicial aid he may need.

These considerations have led the courts of those States where this question has been raised, to decide in favor of the position taken by the plaintiff in error. Thus, in State of Nevada *vs.* Earle, 1 Nevada State Reports,

the domicil of its owner, and to apply the same principle to the citizens of our own and all other States."

And in the case of the State *vs.* Ross—cited above—it is further said:

"By the law under consideration, the Legislature have declared that all the property in action of every citizen of this State, wherever it may be situate, shall be liable to taxation. They have enacted that debts due from foreign debtors and stocks in corporations in other States, and all property in action, owned by citizens of this State, shall be taxed to the owner thereof. They have legislated upon the principle that property in action, having no visible locality, should follow the domicil of the owner, and be subject to taxation there. Adopting this principle in regard to their own citizens, it is not probable that the Legislature designed to repudiate it in regard to the citizens of other States. Such a course of legislation, besides its tendency to provoke retaliatory legislation by other governments, would operate unjustly and oppressively upon every individual living in one State, and owning property in another, by subjecting him to double taxation. If a law be enacted in Georgia precisely similar to our own, it is certain that the prosecutor would be liable to taxation for his property as a citizen of that State, and if it be held liable to taxation in this State also, it must necessarily bear the burthen of double taxation; and on the other hand, under such a system of legislation, property owned in Georgia, by a citizen of this State, would be liable to the same burthen of double taxation."

So in People vs. Eastman, 25 California reports, 603; The court say: "This is an action to recover a tax levied in the county of Mariposa, under the revenue act of 1861, for the fiscal year 1863–64. At the time the tax was levied, the defendant was, and he ever since has been a resident of the city and county of San Francisco. The property taxed was a judgment of record in Mariposa county, foreclosing a mortgage held by defendant on lands situate in said county. The defendant had judgment, and plaintiff appeals."

"The question is, as to whether the judgment is properly taxable in Mariposa county. We think not. In the case of The People vs. Park, 23 Cal. 138, the property assessed was a mortgage upon lands in Mariposa county, held by a resident in San Francisco. In that case the tax was assessed under the act of 1860; but the provisions of that act, in all respects affecting the question under consideration, are substantially the same as in the act of 1861. It was held—and we think correctly—that the property was not assessable in Mariposa county. The property to be assessed in such cases is money at interest or debts. The money at interest, debt or obligation, is the principal thing, and the mortgage is only a security — a mere incident to the debt or obligation. The mortgage has no existence independent of the thing secured by it; a payment of the debt discharges the mort-

gage. The thing secured is intangible, and has no *situs* distinct and apart from the residence of the holder. It pertains to and follows the person. The same debt may, at the same time, be secured by a mortgage upon land in every county in the State; and if the mere fact, that the mortgage exists in a particular county, gives the property in the mortgage a *situs* subjecting it to taxation in that county, a party, without further legislation, might be called upon to pay the tax several times—for the lien for taxes attaches at the same time in every county in the State, and the mortgage in one county may be a different one from that in another, although the debt secured is the same."

And to the same effect is the opinion and judgment of the court in the case of Latrobe, trustee, vs. The Mayor and City Council of Baltimore.—19 Maryland Reports, pp. 20–21, in which Cochran, J., says:

"This is an appeal from a judgment obtained in a suit at law, brought to recover taxes assessed on mortgages of property in the city of Baltimore, made to the appellant as trustee of the estate of Joseph Thornburg, deceased. At the time of the assessment and institution of the suit, the appellant was a resident of Howard county, the *cestuis que trust* being, at the same time, residents of Baltimore city, and the question as to the liability of the appellant for the taxes assessed, is the only one presented." * * * * * * *

"Upon the principle that the possession of personalty follows the person owning the legal title, the mortgages, on the valuation of which the assessment of the taxes in this case was made, so far as they could be made the basis of an assessment, were beyond the jurisdiction of the appellee. The assessment, in such cases, is made upon the amount of the mortgage debt, and not upon the value of the property mortgaged to secure it. As the basis of the assessment is the amount of the debtor's obligation to the creditor, the recording of a mortgage in another county or district than that of the creditor's residence, collaterally securing its satisfaction, cannot have the effect of locating the debt where the mortgage is recorded."

"We think the taxes, sought to be recovered in this case, were assessed without authority, and therefore reverse the judgment."

The converse of the proposition for which we contend has been held by the Supreme Court of Pennsylvania, in a well considered opinion delivered in M'Keen *vs.* the County of Northampton, 13 Wright, 519, where it is clearly shown and expressly decided, that the owner of shares of stock in an incorporated company—and *a fortiori*, we say, a creditor of such company—has no title whatever in the real estate or other property of the company, and that such shares are taxable as the property of the stockholder, only in the State of which he is a resident. Justice Agnew, delivering the opinion of the court, says:

"The defendant below being a citizen of this State, it is clear he is subject personally to its power to tax, and that all his property accompanying his person, or falling legitimately within the territorial jurisdiction of the State, is equally within its authority. The interest which an owner of shares has in the stock of a corporation is personal. Whithersoever he goes it accompanies him, and when he dies his domicil governs its succession. It goes to his executor or administrator, and not to the heirs, and is carried into the inventory of his personal effects. When it is argued, therefore, that the foundry, machine shop, and other estate of the corporation, being within the State of New Jersey, are subject wholly to the same exclusive State jurisdiction there which we claim for this State over property within its territory, another ownership is stated and a new issue introduced. But to that property the defendant below has no title, his title being in the shares he holds, and not in the property of the corporation. No execution against him there would sell a spark of right to it, nor would his heirs-at-law succeed to any estate in it. Unquestionably it may be taxed as the property of the corporation in New Jersey; but the ownership there is that of a corporation, the legal entity, and not of the natural persons who own the shares of its stock."

"We have authorities directly upon this question deciding the principle, though upon a different species of tax, the collateral inheritance tax—in Re Short's estate, 11 Harris, 63. There the decedent, a resident of Philadelphia, owned half a million of dollars in stocks, and corporations, of other States, and bonds of the State of Kentucky, and a bank deposit in New York, and all were held to be subject to the collateral inheritance tax here. Gibson, C. J., opens his opinion by stating: 'that Mr. Short's property out of the State subjected him to personal liability for tax assessed on it here in his life time is not to be doubted; the general rule is that the situs of personal property follows the domicil of the owner of it insomuch that even a creditor cannot reach it in a foreign country, except by attachment or some other process provided by the local law; certainly not by a personal action without appearance or something equivalent to it.' To the same effect is the case of Hood's estate, 9 Harris, 106, the difference of domicil merely leading to an opposite result."

This decision is undoubtedly correct. It was not referred to, either in argument or by the court, so far as appears by the report of the case, in Maltby vs. The Reading Railroad Company, 2 P. F. S., 140. And we do not see how it can be reconciled with that case—which certainly did not intend to overrule it—unless the same property can have a *situs* in two or more different States at the same time, for the same purpose precisely; which seems to us as impossible as that the same body should be in two places at the same instant.

Here then we have it clearly and distinctly declared that in Pennsylvania the general principle, that the *situs* of choses in action is determined by the residence of the owner, is recognized and applied in her tax laws; and it is certainly too plain for argument that upon this principle the tax claimed in this case cannot be sustained. Either this principle must be abandoned, and the opposite one adopted, that the *situs* is where the tangible property is situated, out of which the chose in action arose, as it were, which would be a new principle not recognized as law hitherto; or abandoning all principle, the law that might makes right must be adopted, and the rule applied in any given case must depend upon the question whether the tangible property, or the chose of action, with the person of the creditor, is in the State.

The following quotation from the opinion of the Court of Appeals, in Hoyt *vs.* The Commissioners of Taxes, 23 N. Y., 230, delivered by Comstock, C. J., shows the impossibility of reconcilng these two opposite principles. "The statute means one thing or the other. It cannot have double and inconsistent interpretations. And, as this is impossible, so we cannot, under and according to the statute, tax the citizen of Massachusetts in respect to his chattels here, and at the same time tax the citizen of New York in respect of his chattels having an actual *situs* there. In both cases the property must be 'within this State,' or there is no right to tax it at all. It cannot be true in fact, if a Massachusetts man owns two spans of horses, one of which draws his carriage at home, and the other is kept on his farm here, that both are within the State. It cannot be true by any legal intendment, because *the same intendment which locates one of them here must locate the other abroad, and beyond the taxing power.* It seems to follow, then, inevitably, that before we can uphold the tax which has been imposed upon the relator's property situated in New Orleans and New Jersey, we must first determine that if he resided there, and the same goods and chattels were located here, they could not be taxed as being within the State. Such a determination would, I am satisfied, contravene the plain letter of the statute, as well as all sound principles underlying the subject."

So, here, it cannot be true in fact if the bonds of a corporation of another State, held and owned by a resident of Pennsylvania, are in the State and subject to the jurisdiction and taxing power of the Legislature of Pennsylvania, that the bonds of a Pennsylvania corporation, held and owned by a resident of another State, are also within and subject to the same jurisdiction and power; and "it cannot be true by any legal intendment, because the same intendment which locates one of them here *must* locate the other abroad and beyond the taxing power." Therefore, we contend, since the Supreme Court of Pennsylvania have decided, by the well considered opinion quoted at length above, which is entirely in accordance with the current of their decisions and with the long continued uniform practice of

the State in regard to taxation, as well as with the decisions of the courts of all the other States, that the stock and, *a fortiori*, the bonds held and owned by a resident of Pennsylvania, are within the jurisdiction and taxing power of the State, though the corporation and all its property is situated in some other State; that they are bound both by the fact and by legal intendment to hold—and if not they, this court for them—that the bonds of a Pennsylvania corporation, held by non-residents, as in this case, are not within the same jurisdiction and taxing power. In the language of the case in 3 Zabriskie, already cited, "they have legislated"—and adjudicated—"upon the principle that property in action, having no visible locality, should follow the domicil of the owner and be subject to taxation there. "And that this is the principle on which Pennsylvania has legislated; see act of April 29, 1844, section 32, copied on p. 2 of this brief." Adopting this principle in regard to their own citizens, it is not probable that the Legislature,"—or the court,—"designed to repudiate it in regard to citizens of other States. Such a course of legislation,"—or of adjudication,—"besides its tendency to provoke retaliation by other governments, would operate unjustly and oppressively on every individual living in one State and owning property,"—or holding bonds secured—"in another, by subjecting him to double taxation."

We think it much more probable, that the rule laid down in Maltby *vs.* The Railroad Company, was adopted hastily, without sufficient consideration, and without adverting to the consequences which would logically result from it, or to its antagonism to the principles already adopted by the court, and which had become a part of the settled law of the State. And hence we consider this a proper case for this court, on the principle laid down and enforced in the cases of Gelpeke *vs.* City of Dubuque, 1 Wallace, 175, and Butz *vs.* City of Muscatine, 8 Wallace, 575, to follow those decisions of the State court which best accord with its own decisions, with sound principle, and with the constitutional rights of citizens of other States.

We do not think that our objections to this tax, when imposed upon non-residents, are met by saying that the franchises and property of the debtor corporation are protected by the civil and military power of this State, and that taxation is the correlative of protection. All this is undoubtedly true; but it must be borne in mind that the franchises and property of the corporation themselves pay the taxes which are the correlative of the protection which they receive. The franchises and property of a corporation having a debt, are no more protected than those of one having no debt, and both pay taxes in the same proportion; and certainly the protection of the person and property of one, who is a citizen and resident of the State, is not the correlative of the taxation of another, who is neither a citizen

nor resident, or of his property, which is not within the State. Besides, the tax on the bonds of a resident of the State is not levied on the ground of the protection given by the State to the corporation, its franchises and property, but on the ground of the protection accorded to the property of the bondholder himself, and the duty of every citizen to contribute to the necessities of the State. Hence, in taxing a resident, there is no occasion to inquire where his debtor resides, whether within the State or without. The tax is not paid with any reference to the debtor or his property, but is solely relative to the owner of the *choses in action*. This is clearly shown in the Pennsylvania case above cited, and is undoubtedly correct in principle.

And in this point of view also the sustaining of the tax involves the inconsistency, if not absurdity, of putting it on one ground when it falls upon a resident, and another when upon a non-resident, though the law itself makes no distinction. That is to say, in order to uphold the tax on non-residents it must be claimed that the tax is in some sense on the property of the debtor, while as to the resident it is upon his *chose in action*, his ownership of the security for the debt, and because of the protection which his property and person enjoy from the State.

When it is said, therefore, that the *choses in action* of the non-resident are taxable and taxed because of the protection afforded to the property of his debtor, we think, as is said by Justice Agnew, in the case last above cited: "a new issue is introduced," and a new principle in the science of taxation is propounded.

But the law itself gives no countenance to the argument that it is based on the—as we consider it—self-contradictory ground of the ownership by the creditor, of the property of the debtor. It has none of the ordinary features of a tax law, nor is it encumbered with any of the provisions or machinery usually supposed to be necessary to the successful working of such a law. There is nothing in the nature of a levy or assessment, and no provision whatever for notice to or right of appeal by the non-resident bondholder; indeed, it is only incidentally that the law alludes to him at all, and only in connection with the, as it would seem, trifling circumstance that the contribution exacted must fall upon him.

It is a bare and bald command to the officers of the debtor company to "retain" part of the interest due to its creditors, and to pay it to the State. It enacts that "every president, treasurer, cashier, or other officer of any company incorporated, or that may hereafter be incorporated, which pays interest to its depositors, bondholders, or other creditors, upon which by the laws of the Commonwealth a State tax is imposed, shall, before payment of the same, *retain from said depositors, bondholders, or other creditors*, the amount of State tax imposed by existing laws, and shall pay over the same to the State Treasurer."

In the language of Lowrie, C. J., 3 Wright, 80, "such legislation seems hardly consistent with the usual comity, or political generosity, which we exercise in our relations with the citizens of sister States."

Such a tax is thus described by Chief Justice Redfield, in his American Railway Cases, 513: "It is a levy upon the corporation, to be paid by non-resident" bondholders "who have no notice of the proceedings, and where the whole proceedings are without any jurisdiction over them. It has been held that such a levy is void on general principles, it being in the nature of a decree of forfeiture or confiscation of property, or its profits or a portion of them, and the principle would be the same if it went the whole extent of all the profits or all the property; and this wholly without jurisdiction. It seems nothing less than an arbitrary appropriation of private property, belonging to citizens resident abroad, to the public use of the State, when the owners are not notified of the proceedings or represented in the Legislature."

It is a levy or contribution, imposed by the State of Pennsylvania, on the income of citizens and residents of other States, when at the same time they are unquestionably liable to a tax upon the same income, in the States of their residence.

We contend that the judgment of the Supreme Court of the State should be reversed:

THIRD.—*Because the law is so antagonistic to the true principles of taxation, settled and adopted in Pennsylvania, as well as elsewhere, as to warrant the conclusion that it was not intended to apply to non-residents or their bonds, and that if so applied it is clearly unconstitutional.*

In the case of Butz *vs.* City of Muscatine, already cited, this court said: "In all cases brought here under the twenty-fifth section of the Judiciary Act, this court has never hesitated to determine for itself the construction and effect of any statute of a State, brought under review, without reference to the previous adjudications of the highest court of the State upon the subject. In the opinion delivered in the case of the Jefferson Branch of the State Bank of Ohio *vs.* Skelley—1 Black, 436—it was well asked: Of what value would the appellate power of this court be to the party aggreived if such were not the rule? In that case and in all other cases brought here, involving the same question, an act of the Legislature of Ohio was pronounced invalid, and the judgments of the Supreme Court of the State were reversed. Cases may be brought here from the Circuit Court of such a character that it is necessary to the right administration of justice that we should proceed upon the same principle in deciding them, Indeed, questions which are identical, may be brought here in both ways. Under such circumstances it will hardly be insisted that State adjudications are to control in the one case and not in the other. Our duty depends

on the questions involved, and not upon the channel through which the case comes before us. Where the settled decisions in relation to a statute, local in its character, have become rules of property, these remarks have no application. In such cases, this court will, as it always has done, follow such adjudications. The cases of a different character, involving State statutes, in which the adjudications of the courts of the States in relation to them have been departed from by this court, extend in an unbroken series, from an early period, after its organization, to the present time."

Assuming then, that, notwithstanding the decision of the Supreme Court of Pennsylvania in this case, the question whether this law was intended to apply to and impose a tax upon non-resident bondholders, is an open one; we argue that it was not intended so to apply. And this is shown by the act of May 1, 1854, which is given in full in the statement of the case above, and is one of the laws upon which the claim to this tax is supported by the Supreme Court of Pennsylvania, in the case of Maltby *vs.* the Railroad Company, already cited. This act is entitled "An Act to exempt certain loans and bonds from taxation," and provides, *inter alia*, that "all bonds or certificates of loans of any railroad company, incorporated by this Commonwealth, shall be liable to taxation for State purposes only."

This provision serves to illustrate the illegality and unconstitutionality of imposing this tax upon non-residents, and hence leads to the strong inference that this was not intended. It is a positive declaration of the legislative will that property of this description shall pay no other tax than the one here claimed. Yet the non-resident who is sought to be taxed here, cannot claim the protection of this law, and must, in the State and place of his residence, and, if the principle of this law is adopted, in the three other States through which the railway of this company extends, pay the same tax on this property, whether State, county, city, or other, as is paid by like property held there. This shows how entirely he is beyond the jurisdiction of this law; it is as powerless to protect him as to tax him directly, and by being taxed indirectly, though the power which the State has over his debtor, he is subjected, because of his liability to the same kind of a tax, upon the same property, in the State of his residence, to a burden which is not imposed upon the bondholder who is a resident of the State. Ought we not, therefore, to conclude that no such injustice was intended, and that the law was not designed to apply to him?

As was said by Comstock, C. J., in Hoyt *vs.* The Commissioners of Taxes, cited above: "It is pertinent to inquire whether the Legislature intended to tax property thus situated. It 'shall not be assessed against any other person.'—Here, 'shall be liable to taxation for State purposes only.'—This prohibition would be impossible and absurd, in the case supposed of chattels having a *situs* in another jurisdiction. Yet the prohibition relates to

the very thing which is the subject of the assessment, and from this I think it a very just inference that the Legislature in enacting the section had in view only personal estate within the State; in other words, the property which they had previously declared to be liable to taxation."

These considerations, we think, lead plainly to the conclusion that the Legislature of Pennsylvania did not intend this tax to be applied to non-resident bondholders. In the language of the Chief Justice of the State of New Jersey, already quoted—3 Zabr., 517—"It cannot be presumed, in the absence of clear and explicit enactment, that the Legislature designed to weaken the bonds of the Union by discouraging commercial intercourse between the citizens of our own and our sister States. The fair and reasonable presumption is, that they designed to adopt a general principle, just and beneficial in its operation, viz: To make all property in action taxable at the domicil of its owner, and to apply the same principle to the citizens of our own and of all other States."

And we would suggest here, in passing, whether the double taxation which would fall upon the citizens of other States, if this law were applied to them, would be compatible with their rights under the clause of the Constitution, which guarantees to the citizens of each State all privileges and immunities of citizens of the several States?

We are well aware that it is settled in Pennsylvania that taxation, to be legal, need not be equal, and that there may be what in one sense can be called double taxation, as of lands and mortgages upon them, or ground rents issuing out of them; though this is not really double taxation, because the lands and mortgages are different properties, of different species, and owned by different persons; but we do not know nor believe that it was ever intended to be decided, that four or more States, separate and independent, geographically, as well as politically, can each legally tax the same property in the same form, and as the property of the same person, for the very same purpose, each having the right to tax, and neither having the power to restrain the other from taxing. Yet unless such an exercise of the taxing power be legal and constitutional, this State cannot impose this tax upon non-resident bondholders; for it cannot be questioned that the State of their residence can lawfully tax them on account of their bonds.

The cases cited by the learned judge of the court below, to show that double taxation is not unlawful, are, none of them, instances of the kind of double taxation complained of in this case. They are instances where land and the mortgage secured on it, or the real estate of a corporation and its capital stock, or the capital stock of a corporation and the shares of stock owned by an individual, in such corporation, are taxed. In none of these instances is the same thing taxed twice. The land is real, the mortgage personal property. So, as stated by C. Justice Thompson, in Lycoming

County *vs.* Gamble, 11 Wright, 110, "shares of stock and capital stock of a corporation are distinct and different things obviously," and so are the capital stock of a corporation and its real estate. Here, if the principle, or rather the practice, contended for by the Commonwealth, in this case, is correct, the same thing, in the hands of the same person, may be taxed in the same way, for the same purposes, in five different States, at the same time.

We contend that the judgment of the Supreme Court of the State of Pennsylvania should be reversed:

FOURTH—*Because, by the law declared valid by that judgment, the Legislature of Pennsylvania attempt to exercise jurisdiction beyond the State, and to affect contracts and rights of citizens of other States, which are protected by the Constitution of the United States and the judicial power granted to its courts.*

The argument on this point is founded on the principle enunciated by Justice Johnson, in summing up the conclusion arrived at by the majority of the court in the case of Ogden *vs.* Saunders, 12 W., 369, as to the power of the States to pass insolvent laws, viz:

"When the States pass beyond their own limits, and the rights of their own citizens, and act upon the rights of citizens of other States, there arises a conflict of sovereign power, and a collision with the judicial power granted to the United States, which renders the exercise of such a power incompatible with the rights of other States, and with the Constitution of the United States."

In delivering the opinion in that case Justice Johnson said: 12 W., pp. 358–9: "As between its own citizens, whatever be the origin of the contract, there is now no question to be made on the effect of such a discharge; nor is it to be questioned, that a discharge not valid under the Constitution in the courts of the United States, is equally invalid in the State courts. The question to be considered goes to the invalidity of the discharge altogether, and, therefore, steers clear of that provision in the Constitution which purports to give validity in every State to the records, judicial proceedings, and so forth, of each State. * * * *

"The question is one partly international, partly constitutional. My opinion on the subject is briefly this: That the provision in the Constitution which gives the power to the General Government to establish tribunals of its own in every State, in order that the citizens of other States or sovereignties might therein prosecute their rights under the jurisdiction of the United States, had for its object an harmonious distribution of justice throughout the Union; to confine the States, in the exercise of their judicial sovereignty, to cases between their own citizens; to prevent, in fact, the

exercise of that power over the rights of citizens of other States, which the origin of the contract might be supposed to give to each State; and thus to obviate that *conflictus legum*, which has employed the pens of Huberus and various others, and which any one who studies the subject will plainly perceive it is infinitely more easy to prevent than to adjust."

"These conflicts of power and right necessarily arise only after contracts are entered into. Contracts, then, become the appropriate subjects of judicial cognizance; and if the just claims which they give rise to, are violated by arbitrary laws, or if the course of distributive justice be turned aside, or obstructed, by legislative interference, it becomes a subject of jealousy, irritation, and national complaint or retaliation."

And this court, in the case of Shaw vs. Robbins, applied the same doctrine to the decision of a State court, and reversed its judgment.—7 Curtis' Decisions Sup. Ct., 226, note.

This was an action on several bills of exchange drawn by the plaintiff on the defendant, payable to plaintiff's order, and by the defendant duly accepted. At the time of the transaction the plaintiff was a citizen of Massachusetts, resident in that State, and the defendant a citizen of New York, and there resident. The action was brought in a State court, in Ohio, and the defendant relied on a discharge obtained in New York, under the provisions of the insolvent laws of that State. The highest court of law in Ohio gave judgment for the defendant, and the cause was brought before this Court by a writ of error.

Mr. Justice Johnson, delivering the opinion of the Court, said: "This is a contract between a citizen of New York and a citizen of Massachusetts. It only differs from Ogden vs. Sanders in this particular, that the action was brought in a State court; not the court of New York, but the court of another State. We think the decision in the case of Ogden vs. Sanders applies to this, and must govern its decision. The judgment below, therefore, must be reversed, and the cause remanded for such further proceedings as the law may require."

And the Supreme Court of the State of Massachusetts recognized the authority of the United States Supreme Court on this principle.—Kelley *vs.* Drury, 9 Allen, 27; and following Baldwin *vs.* Hale, 1 Wallace, 223, overruled their own prior decisions which were in conflict with it. They say: "The decisions of the Supreme Court of the United States upon a question of this nature are guides to which we yield as the highest exponents of the law."

* * * * * * * *

"The general principle that our insolvent law could not affect citizens of other States, to whom liabilities were created that followed the person of the creditor, was well understood, and practically applied by the court in

numerous cases. But the question whether a certificate of discharge obtained here could be pleaded in our courts in bar of a contract which by its terms was to be performed here, was thought by a majority of this court not to have been directly decided in any case presenting that precise point by the Supreme Court of the United States."

"The doubt has been whether a party who makes a contract with a citizen of Massachusetts, which is by its terms to be wholly performed here, does not subject himself to the existing State laws as to its performance, and as to what will discharge the contracting party from liability in reference to the same."

"The Supreme Court of the United States have, in the recent case of Baldwin *vs.* Hale, considered and decided this precise point. It was there held that in the case of a promissory note made in this Commonwealth and to be paid here, but to a citizen of Vermont, such discharge was not a good defence to an action on the note in the Federal Courts." * * *

"We take the decision in the case of Baldwin *vs.* Hale in the broadest application of its doctrines, and give it full effect in the courts of Massachusetts in favor of a citizen of another State. The result is, that the discharge pleaded in bar of the present action cannot avail the defendant."

In conclusion, we respectfully submit, that both principle and precedent require that the judgment of the Supreme Court of the State of Pennsylvania in this case, should be reversed by this court.

J. W. SIMONTON,
Counsel for Plaintiff in Error

Supreme Court of the United States.

THE PITTSBURGH, FORT WAYNE AND CHICAGO RAILWAY COMPANY,

Plaintiff in Error.

vs.

THE COMMONWEALTH OF PENNSYLVANIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

Brief in Support of Jurisdiction.

J. W. SIMONTON,
For Plaintiff in Error.

Supreme Court of the United States.

THE PITTSBURG, FORT WAYNE AND CHICAGO RAILWAY COMPANY,

PLAINTIFF IN ERROR

VS.

THE COMMONWEALTH OF PENNSYLVANIA,

DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF PENNSYLVANIA.

BRIEF OF ARGUMENT IN SUPPORT OF JURISDICTION.

The facts of this case are fully stated in our general brief, and we will, therefore, not repeat them here. So far as the motion to dismiss is concerned, the case, as we contend, stands thus: The plaintiff in error, defendant in the lower court, introduced evidence to show that a large proportion of the bonds were, at all times, held and owned by non-residents of Pennsylvania, who purchased and paid for them out of said State before the passage of the law under which the tax is claimed, and that the bonds and accompanying coupons were payable out of said State; and on these facts they contended that to apply the law in question to these bonds, and to tax them, would impair the obligation of the contract between the corporation and its creditors, the non-resident bondholders. The court decided that so to do would not impair the obligation of such contract, and directed the jury to find for plaintiff the whole amount of tax claimed. This was in the lower State court, and the plaintiff in error, by bill of exceptions, brought this charge upon the record, and had it reviewed in the Supreme Court of the State, where the ruling of the court below was affirmed.

If the record shows this statement to be correct, we submit that the jurisdiction of this court is established.

We do not contend that *opinions* of the State courts are part of the record in cases brought here from such courts, and the opinion of the State Supreme Court in this case will not be found in the transcript. As said by Marshall, C. J., in *Williams vs. Norris*, 12, Wh. 118, "An *opinion not given to the jury, pronounced after the verdict was rendered, and, consequently, having no influence on that verdict*, which states merely the course of reasoning which conducted the court to its judgment, may explain the views and motives of the court, but does not form a part of its judgment, and cannot constitute a part of the record." This is clear; and if anything can be still more clear, it is that binding instructions given to a jury on matters of law, excepted to, and exception sealed by the judge, are brought upon the record. These are not *opinions*, but *rulings, decisions.*

Thus, in *Armstrong vs. Treasurer of Athens Co.*, 16 Peters, 285, among the ways in which the record may show jurisdiction is stated, "*Secondly, by the direction given by the court and stated in the exception.*"

An examination of the record in this case will show that the question is thus raised. Thus, on the trial in the lower court, the learned judge, in answer to the position that the law, as applied to this case, was repugnant to the Constitution of the United States, because it impaired the obligation of the contract between the non-resident bondholder and the corporation, said:

"*It is said, however, that these laws impair the obligation of the contract between the debtor and the creditor. We are unable to see in what particular.* All citizens are subject to taxation, either in their persons or their property, or both. Therefore, where they lend money the loan may be taxed, and if the State, by its laws, chooses to make the debtor the collector, he may be ordered to withhold the amount from his obligation. If the creditor is a non-resident of the State his person cannot be taxed, but his money, lent to our citizens or institutions, may be, on account of the protection furnished to his claim or the property on which it is secured, and the tax be collected through the medium of the debtor. The laws tax the loan as property found here in Pennsylvania, and impose no heavier duty on it than on like property held by our own citizens. See Maltby vs. The Railroad Company, already cited. Hood's estate, 9 Harris, 116."—Printed record, p. 112.

And in answer to the allegation that the act of 1864 was in conflict with the Constitution of the United States, and that the Legislature could not impose this tax on the non-resident bondholder, under the facts of this case, since by so doing they would be taxing property and interests beyond their

jurisdiction, the learned judge said, referring to the case of The Railroad Company vs. Jackson, 7 Wall., 262:

"In the case reviewed in the Supreme Court of the United States, as in the case now on trial, there was no attempt on the part of Pennsylvania to tax property or rights beyond her jurisdiction, she did not propose to sever the bonds and say this one shall pay a tax to Maryland and that one to Pennsylvania, but she did equal justice to the creditor by saying: You shall pay your *pro rata* of the three mill tax to us, and no more, rating it according to the length of the road in each State. The same is done here." Printed record, p. 114.

Having thus overruled all the positions taken by the plaintiff in error, who was defendant in the lower court, the judge concluded by giving the following binding instruction to the jury: "Your verdict will be rendered for sixteen thousand one hundred and forty-nine dollars and seventy-four cents and costs of suit." Printed record, p. 115.

To this charge a bill of exceptions was sealed by the judge, as follows:

"To this charge the defendant, by its counsel, and also the Attorney General for the Commonwealth, did except and at the request of each this exception sealed.

JNO. J. PEARSON. [SEAL.]"

Printed record, p. 115.

The case was thereupon removed to the Supreme Court of the State by writ of error. The only errors alleged upon the record were to the charge of the court below.

"The pleadings in the Supreme Court, on the part of the plaintiff in error, consist of what are called assignments of error, to which the defendant replies *in nullo est erratum*, or any other plea on which he choses to rely." *Armstrong's Appeal*, 18, P. F. S.,—58 Pa. St.,—410.

The assignments in this case were the parts of the charge of the court below to the jury, complained of, and excepted to, which are fully set out on page 118 of the printed record, but for convenience of reference we insert three of them here, as follows:

"1. The court erred in charging the jury as follows: 'The tax now in controversy is imposed, by the various statutes cited, on corporation loans; is authorized to be retained by the act of 1864, and must be deducted from the bonds held by non-residents, as well as those residing in the State.'"

"2. In charging the jury as follows; 'It is said, however, that these laws impair the obligation of the contract between the debtor and the creditor. We are unable to see in what particular. All citizens are subject to taxation, either in their persons or their property, or both. Therefore, where they lend money the loan may be taxed; and if the State, by its laws, chooses to make the debtor the collector, he may be ordered to withhold the

amount from his obligation. If the creditor is a non-resident of the State his person cannot be taxed, but his money, lent to our citizens or institutions, may be, on account of the protection furnished to his claim, or the property on which it is secured, and the tax be collected through the medium of the debtor. The laws tax the loan as property found here in Pennsylvania, and impose no heavier duty on it than on like property held by our own citizens.'"

"3. In charging the jury as follows: 'In the case reviewed in the Supreme Court of the United States,' (Northern Central Railway vs. Jackson,) "as in the case now on trial, there was no attempt on the part of Pennsylvania to tax property or rights beyond her jurisdiction; she did not propose to sever the bonds, and say this one shall pay a tax to Maryland and that one to Pennsylvania, but she did equal justice to the creditor by saying: You shall pay your *pro rata* of the three mill tax to us, and no more, rating it according to the length of road in each State. The same is done here. The coupons being payable out of the State, we hold to be unimportant.'"

These assignments are, as is said in *Armstrong's Appeal*, equivalent to the declaration in the lower court—are part of the record—and they, therefore, show exactly what questions were raised and decided in the court, whose decision is now here for review. Our case is thus brought also within the first rule laid down in *Armstrong vs. Treasurer of Athens County*, namely, that it appears "by express averment, or by necessary intendment in the pleadings in the case," that the point decided is one embraced within the judiciary act. The lower court decided that the tax law in question did not impair the obligation of the contract between the corporation and its bondholders. The pleadings in the Supreme Court set forth this ruling as the error complained of, and the Supreme Court affirmed the ruling of the court below, and entered judgment thus:

"And now, to wit: July 7, 1870, this cause came on to be heard, and, on due consideration, it is ordered that the judgment of the court below be affirmed, this court being of the opinion that the rulings of the learned judge of the court below, complained of in the assignments of error, were in all respects in conformity with law. Per Curiam, Thompson, C. J." Printed record, p. 118.

They could not have entered this judgment, affirming the judgment of the court below, without deciding that the tax here complained of *did not* impair the obligation of the contract between the corporation and the holders of its bond.

The defendant in error is, therefore, mistaken in saying — Brief, p. 8,—that there is no bill of exceptions, to bring the charge of the lower court to the jury upon the record. Page 115 of the printed transcript

shows that the charge was excepted to by defendant below, and an exception sealed at their request; and we need not argue here in the presence of the learned Justice, who formerly sat on the bench of the Supreme Court of Pennsylvania, that this exception, followed by proper assignments of error, which appear on page 118 of the printed transcript, brought the charge upon the record, and that these assignments of error show definitely to what part of the charge exception was taken. We admit that we cannot complain of any part of the charge not quoted in the assignments of error.

Defendant in error says—Brief, p. 2:—"Viewed simply as a question of fact, it is submitted that the matter was left in such doubt that a jury might have found for the Commonwealth, on the ground that it had not been clearly shown what part, if any, of the bonds was held by non-residents at the time the tax was levied. It follows that even if a question had been *raised* under section twenty-five of the judiciary act, the verdict and judgment thereon do not necessarily show that question to have been *decided* in such manner as to give jurisdiction to this court, or to have been decided at all."

It is a sufficient answer to this suggestion to say that the only evidence on the subject, if believed by the jury, showed that a large proportion of the bonds was at all times, since they were issued and sold, held by non-residents, and that the court gave a binding instruction to the jury to find in favor of the Commonwealth for the whole amount of tax claimed, and that this instruction forms part of the bill of exceptions.

This court is so familiar with its own decisions on this question of jurisdiction that we do not consider it necessary to cite them; we submit that the record in this case brings it within the principle of those decisions, and shows that a federal question was raised and decided in the case.

We embrace this opportunity to say a few words in

REPLY TO THE ARGUMENT OF DEFENDANT IN ERROR ON THE MERITS.

In the case of *Maltby vs. The Reading and Columbia Railroad Company*, 2, P. F. Smith,—52 Pa. St.,—140, which ruled this case in the State courts, the court say:

"There must be jurisdiction over either the property or person of the owner, else the power 'to tax' cannot be exercised; but where the property is within our jurisdiction, and enjoys the protection of our State government, it is justly taxable, and it is of no moment that the owner who is required to pay the tax resides elsewhere."

And the decision was rested upon the ground that the non-resident bond holder had such an ownership in the property pledged as security for the

payment of the principal and interest of the bonds, that he could be taxed in respect of such property, and that the State had actual jurisdiction of the property, because the railroad and franchises of the corporation were within its jurisdiction.

The principle as to what is necessary to confer jurisdiction was correct, as is admitted by all, but as we have endeavored to show in our general brief, the facts assumed did not exist. This seems to be admitted by the defendant here, who now, for the first time, claims that the tax is levied "neither on the security—the road—nor on the *chose in action*—the bond, but upon the *interest*, payable by the corporation;" and that this "thing, the interest money, has a tangible *situs* in Pennsylvania, and can be taxed there," it being not said, but necessarily assumed, that this "interest money," while in the hands of the corporation, is the property of the non-resident bondholder.

To this position there are several answers—

First. It is expressly decided in *Maltby vs. The Railroad*, *supra*, 148, that this is *not* a tax upon the *interest*, but upon the *bond*. The court say:

"*The three mill tax is imposed, not on the interest but on the principle of the plaintiff's bond.* Here is a discrepance, undoubtedly, but it is more verbal than substantial. Taking the act of 1864 in connection with the prior acts to which I have referred, and reading them as parts of a legislative system for aiding the revenues of the Commonwealth, they amount to this and no more; that the three mill tax shall be assessed upon the par value of the corporation loan, and shall be retained by the corporation officers out of the accruing interest thereon. The verbiology of acts of Assembly, passed at different times, though in pursuit of a common object, is very apt to be ambiguous and artificial, and there is not more difficulty in reconciling the terms of these several acts than we are accustomed to encounter, but we must not allow a too strict adherence to the words of the enactment to defeat the intent of the Legislature. In other words, the acts being in *pari materia*, must be so construed as to give due effect to each. It is in this way only that we can reach an intelligible conclusion, and this is the mode by which we arrive at the above stated result, that the taxation of the bond is to be deducted from the accruing interest. *If the act of* 1864 *be not applied to this tax upon the principal debt, there is no tax to which it is applicable.*"

Second. If it were a tax upon the interest, that has *not* an actual *situs* in Pennsylvania. It is payable in New York city, and must be there, according to the terms of the bonds, and it is actually kept there in the hands of the bankers of the corporation, and paid out there to the bondholders.

Third. This interest does *not* belong to the bondholders, but to the corporation; the latter is not a trustee, but a debtor, and simply owes the

former so much money, but has no money in its hands belonging to the bondholder.

All the cases cited by the defendant in error, to show that personal property may be taxed in a State of which the owner is not a resident, recognize and enforce the doctrine that such property must have an actual *situs* within the taxing State.

This is the very position for which we contend, and we claim the *fact*—not the fiction of law—to be in this case, that neither the person nor the property of the non-resident bondholder are within the jurisdiction of the State.

"Where there is jurisdiction neither as to person nor property the imposition of a tax would be *ultra vires* and void. If the Legislature of a State should enact that the citizens or property of another State or country should be taxed in the same manner as the persons and property within its own limits and subject to its authority or in any other manner whatsoever, such a law would be as much a nullity as if in conflict with the most explicit constitutional inhibition. Jurisdiction is as necessary to valid legislative as to valid judicial action. *St. Louis vs. Ferry Company*, 11 Wallace, 428."

Defendant in error relies much on the fact that the tax has been apportioned, according to the length of the road in the State. This is not logical, for if the tax is levied on the interest because this has a "tangible *situs*" within the State, there is no reason why it should not be levied upon it all, for it is all here if any is. The fact then, that an apportionment has been made, shows that it was not, as the Supreme Court of Pennsylvania say it could not lawfully be, levied upon the interest.

But the fact of apportionment does not remove the legal difficulty in the way of this tax, it merely affects the amount, not the principle of the tax. If the State has the right to levy a tax of one mill on the dollar upon the par value of bonds owned and held in other States, she has a right to levy three or ten, and the fact that the law fixes the tax at three mills, and the assessor levies only one, does not make the tax any more legal. This is all that is effected by the apportionment.

We do not claim immunity from this tax merely because the owners of the bonds are out of the jurisdiction of the State, but because, in addition to this, the bonds which are taxed are and always have been out of the State; were issued and sold, and are payable and can be collected by compulsory process, out of the State, and are not and never have been in any way within its jurisdiction.

The act of 29th April, 1844, section 32, shows clearly that it was intended to apply only, so far as *choses in action*, or other rights, as distinguished from tangible corporeal subjects, are embraced in it, to such as are held or owned by persons residing within the State. Thus, after

enumerating as subjects of taxation, real estate and tangible personal property, it provides: also, all mortgages, money owing by solvent debtors whether by promissory note, penal or single bill, bond or judgment; also, all articles of agreement, and accounts bearing interest, *owned or possessed by any person or persons whatever*, except notes or bills for work or labor done and bank notes; also, all shares or stock in any bank, institution or company now or hereafter incorporated by or in pursuance of any law of this Commonwealth, *or any other State or government*, and on all shares of stock or weekly deposits in any unincorporated saving fund institution, and all public loans or stocks whatsoever, except those issued by this Commonwealth, and *all money loaned or invested on interest in any other State*, &c., &c.— * * * * "shall be valued and assessed for taxation for the purposes in this act mentioned, and for all State and county purposes whatsoever."

Thus, when "all shares of stock, in any bank, institution or company, now or hereafter incorporated by or in pursuance of any law of this Commonwealth, *or any other State or government*," are made taxable, it must be intended to mean where held or owned by residents of the State of Pennsylvania; and the same must be conceded of "*all money loaned or invested on interest in any other State*," for no one will pretend that money so loaned or invested, and held or owned by a resident of such other State, could, by any possibility, be taxed in Pennsylvania. The law, then, is constructed on the theory that the State where the owner resides, and where he holds the evidence of his title to stocks or money loaned, has the right to tax him in respect of it.

These bonds and the coupons attached are not *choses in action*, but as is said in the Pennsylvania case, of *County of Beaver vs. Armstrong*, 44 Pa. St., R. 69, "Are on the footing of negotiable paper, and pass from hand to hand by delivery as the representatives of money. They may circulate together or separately, and suits on the coupons are sustained entirely independently of the bond to which they were originally annexed. It is therefore of very little consequence whether they are promissory notes, bills, drafts or checks, for they have the same quality of negociability as either of these instruments, and the holder sues upon them and recovers in his own name;" citing numerous authorities, which show this to be the doctrine of this court, as well as of the courts of other States and and of England. Hence they could not practically be attached in Pennsylvania by making the corporation garnishee, since any *bona fide* holder for value, without notice of the attachment, could recover on them.

These bonds were all issued prior to the passage of the act of 1864, under which this tax is claimed.

J. W. SIMONTON,
for Plaintiff in Error.

Supreme Court of the United States.

NO. 407 DECEMBER TERM, 1870.

THE PITTSBURG, FORT WAYNE AND CHICAGO RAILWAY COMPANY,
Plaintiff in Error,

vs.

THE COMMONWEALTH OF PENNSYLVANIA.

IN ERROR TO THE SUPREME COURT OF PENNSYLVANIA.

Brief on behalf of Defendant in Error.

F. CARROLL BREWSTER,
Attorney General.
JAMES W. M. NEWLIN,
For Defendant in Error.

Supreme Court of the United States.

THE PITTSBURG, FORT WAYNE AND CHICAGO RAILWAY COMPANY,

Plaintiff in Error,

vs.

THE COMMONWEALTH OF PENNSYLVANIA.

IN ERROR TO THE SUPREME COURT OF PENNSYLVANIA.

STATEMENT OF THE CASE.

Under a general revenue act of Pennsylvania, the interest payable to the holders of bonds of the Pittsburg, Fort Wayne and Chicago Railroad Company, is claimed to be liable to such a proportion of a tax of three mills on the dollar thereof, as the length of the road in Pennsylvania bears to its whole length in that State and in Ohio. The road and its franchises are mortgaged to secure the bonds in question. The company claims the tax to be unconstitutional.

BRIEF OF ARGUMENT FOR DEFENDANT IN ERROR.

I. This is not really a tax on the bonds, *i. e.* the written evidence of the company's debts, nor is it a tax on even the moneys loaned to the company, but it is in effect a tax on the *interest* on the moneys of the bondholders in the hands of this Pennsylvania company, and, therefore, within the jurisdiction and subject to the control of the State. What gives value to the bonds is the fact that the State has granted it corporate privileges and protects the same, and the mortgage is upon these franchises and rights and the whole property of the company. No discrimination is made against any class of companies. Again, by apportioning the tax according to the length of the road in Pennsylvania, as compared with its *whole* length in this State and Ohio, the Commonwealth avoids directly or indirectly taxing

property outside of its limits. That the case of Jackson *vs.* The Railroad Company, 7 Wallace, 266, is not an authority upon any part of the present case is plain when it is examined in detail. For in the first place the court expressly declined deciding the general principle as to whether the State could tax the interest paid on these bonds as representing the money of the bondholders in the hands of a Pennsylvania corporation, and so being actually within the State. The language of the court on this part of the case is this—Mr. Justice Nelson delivered the opinion of the court:

"It has been argued for the plaintiff, that the acts of the Legislature of Pennsylvania, when properly interpreted, do not embrace the bonds or coupons in question; but it is not important to examine the subject; for, it is not to be denied; as the courts of the State have expounded these laws, that they authorize the deduction, and, if no other objection existed against the tax, the defence would fail. If this was an open question we should have concurred with the interpretation of the court below, which concurred with the views of the plaintiff's counsel. Nor shall we inquire into the competency of the Legislature of Pennsylvania to impose this tax, upon general principles, as we shall place the objection upon other and distinct grounds, though we must say that the tax upon the promissory note or bond, given by the resident debtor, and the withholding of the amount from the interest due to the non-resident holder, would seem to be a tax upon such non-resident. It is not a tax of the money lent, because that belongs to the resident debtor, for which he is taxable; it is a tax on the security, the bond, which is in the hands of the non-resident."

Although this broad general question, therefore, is not decided, but the case expressly made to turn upon another consideration, next to be examined, it is yet intimated *obiter* that the tax is liable to objection on the ground that the court seemed to suppose that it was not a tax on the money loaned, but on the bond itself, which is in the possession of the non-resident holder. It is submitted, on behalf of the State, that this is not a tax on the bond at all, nor on the principal moneys due, but it is a tax on the interest on the bonds, which interest is in the hands of this Pennsylvania company, and, therefore, within the jurisdiction of the State. The real ground upon which the case of *Jackson vs. The R. R. Co.*, was decided, is thus stated by the court:

The ground upon which we place the objection in this case, to the tax, is, in brief, that the bonds amounting to $2,500,000, of which those in question are a part, were issued by this company upon the credit of the line of road, its franchises and fixtures, extending from Baltimore to Sunbury, a given portion of which line lies within the jurisdiction of the State of Maryland. The old company, to which this line belonged, by the act of consolidation, transferred it, with its fixtures and all other interests connected therewith,

including their stock, to the new organization, which have issued these bonds. The security therefor pledged and bound for the payment of them, and of the interest, embraces this Maryland portion of the road; and in case of failure to pay the principal or interest, this portion, with its franchises and fixtures would be liable to sale in satisfaction of the bonds and interest.

Now it is apparent, if the State of Pennsylvania is at liberty to tax these bonds, that, to the extent of this Maryland portion of the road, she is taxing property and interests beyond her jurisdiction. This portion avails her tax roll as effectually as if it were situate within her own limits. The Maryland portion is not liable for the payment of any specified part or quantity of these bonds thus taxed, but is liable, with all its interests, for the whole amount, the same as that portion of the road within the State of Pennsylvania. The bonds were an issue in the usual way, by this Northern Central Railway Company, and the security given by mortgage on the entire line of the road. No portion of the bonds belong to one part more than to another. No severance was made of the bonds, and, therefore, none can be made in the taxation, with reference to the line within the respective jurisdictions of the States. If the tax is permitted as it respects one bond, it must be as it respects all.

Again, if Pennsylvania can tax these bonds, upon the same principle Maryland can tax them. This is too apparent to require argument. The only difference in the two cases is, that the line of road is longer within the limits of the former than within the latter. Her tax would be a more marked one beyond the jurisdiction of the State, as the property and interest outside of its limits would be larger.

The consequence of this tax of three mills on the dollar, if permitted, would be double taxation of the bondholder. Each State could tax the entire issue of bonds, amounting, as we have seen, to $2,500,000.

The effect of this taxation upon the bondholder is readily seen. A tax of three mills per dollar of the principal, at an interest of six per centum, payable semi-annually, is ten per centum per annum of the interest. A tax, therefore, by each State, at this rate, amounts to an annual deduction from the coupons of twenty per centum; and if this consolidation of the line of road had extended into New York or Ohio, or into both, the deduction would have been thirty or forty. If Pennsylvania must tax bonds of this description, she must confine it to bonds issued exclusively by her own corporations.

Our conclusion on this branch of the case is, that to permit the deduction of the tax from the coupons in question, would be giving effect to the acts of the Legislature of Pennsylvania, upon property and interests lying beyond her jurisdiction.

I. The tax in this case is under a general law, the amount of it is three mills upon the dollar. Now, supposing the court to be correct in holding this to be in effect, a tax on the security—*i. e.* the road and its franchises—it will be seen on examination that in the case of the Cleveland, Painesville and Ashtabula railroad that objection does not exist.

The State does *not* levy a tax of three mills on the interest on the bonded indebtedness of the company, but only on such proportion of three mills thereon as the length of the road in Pennsylvania bears to the whole length of the road in both States, so that even considering it a tax on the security it is only upon that portion of the security lying within the State of Pennsylvania.

It is submitted that this is a conclusive answer to this part of the case. It is true, the court say, that the mortgage and bonds are upon the whole road and cannot be apportioned. We do not apportion *the bond*, but the *tax*. This also meets the objection that this is double taxation, and demonstrates that such is not the case.

We go a step further, however, and contend that even were it double taxation it would be unobjectionable on that point.—See *State vs. Newark*, 1 Dutcher, 317; *Tatem vs. Collector*, 3 Zabr., 429.

On the general question of jurisdiction and of the *situs* of the subject matter—See *Story on the Conflict of Laws, (Redfield,)* § 550. "In the next place, let us consider the subject of jurisdiction in regard to property. It will be unnecessary to discuss the matter at large, as to personal property, since the general doctrine is not controverted, that, although movables are, for many purposes, to be deemed to have no *situs*, except that of the domicil of the owner; yet, this being but a legal fiction, it yields, whenever it is necessary, for the purpose of justice, that the actual *situs* of the thing should be examined. A nation within whose territory any personal property is actually situate has an entire dominion over it while therein, in point of sovereignty and jurisdiction, as it has over immovable property situate there. It may regulate its transfer, and subject it to process and execution, and provide for and control the uses and disposition of it to the same extent that it may exert its authority over immovable property. One of the grounds upon which, as we have seen, jurisdiction is assumed over non-residents, is through the instrumentality of their personal property, as well as of their real property, within the local sovereignty; hence it is, that whenever personal property is taken by arrest, attachment or execution within a State, the title so acquired, under the laws of the State, is held valid in every other State, and the same rule is applied to debts due to non-residents, which are subjected to like process under the local laws of a State."

III. This case differs in another respect from the case of *Jackson vs. The*

Railroad Company, for there the suit was brought by a bondholder against the corporation, here the corporation having retained the tax, refuses to pay it over to the Commonwealth, and so retains it in its own possession.

IV. The question, whether the imposition of the tax in dispute, impairs the obligation of a contract between the non-resident bondholder and the corporation, need not be separately considered. If the tax is in itself a lawful one, then the contract must be taken to have been made subject to the power of the State to impose it.

V. That the State intended to impose the tax in question, is expressly recognized in *Jackeon vs. R. R. Co.*, so that part of the case is not open. Whether the tax, having been imposed, is legal, has been already considered.

F. CARROLL BREWSTER,
Attorney General.

JAMES W. M. NEWLIN,
For Defendant in Error.

Supreme Court of the United States.

NO. 82, DECEMBER TERM, 1872.

THE PITTSBURG, FORT WAYNE AND CHICAGO RAILWAY COMPANY,

Plaintiff in Error.

vs.

THE COMMONWEALTH OF PENNSYLVANIA.

IN ERROR TO THE SUPREME COURT OF PENNSYLVANIA.

Brief on behalf of Defendant in Error.

F. CARROLL BREWSTER,
Attorney General.
JAMES W. M. NEWLIN,
For Defendant in Error.

Supreme Court of the United States.

THE PITTSBURG, FORT WAYNE AND CHICAGO RAILWAY COMPANY,

PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF PENNSYLVANIA,

DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF PENNSYLVANIA.

MOTION TO DISMISS WRIT OF ERROR.

The defendant in error moves to dismiss the writ of error herein for want of jurisdiction. It is submitted that it does not appear from the record that any question was raised and decided so as to give jurisdiction to this court, under section twenty-five of the judiciary act.

BRIEF OF ARGUMENT ON MOTION TO DISMISSMENT OF ERROR.

The "specifications of objection to the settlement of the Auditor General, etc.," (page one of transcript of record,) are four in number.

The first three specifications raise simply a question of the *meaning* of the State laws, *i. e.* whether the tax claimed was really imposed thereby. This is a question of construction which belongs exclusively to the State courts.

The fourth specification merely points out the alleged inability of the company to collect the tax from the bondholders, because the interest is due on coupons payable to bearer in New York.

Act of Assembly of March 30, 1811—*Purdon's Digest, page* 822, *pl.* 20—which authorizes appeals from settlements "Provided, however, that the appeal * * be accompanied with a specification of objections to the said settlement."

Porter vs. Commonwealth, 1 *Penna. Rep.* 256.

The appellant is confined to the objections stated in the specification.

2 *Watts & Serg.* 112. 8 *W.* 57. 6 *Barr.* 124.

Settlement is conclusive unless appealed from in sixty days.

Supreme Court of the United States.

THE PITTSBURG, FORT WAYNE AND CHICAGO RAILWAY COMPANY,

PLAINTIFF IN ERROR,

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and the company, it is said, cannot know which of the coupons is subject to the said tax.

It will be observed that none of these specifications show a question to have arisen and been decided in such a manner as to give this court jurisdiction under section twenty-five of the judiciary act.

The settlement (transcript of record, page 1) shows only the amount of the tax, and how apportioned under the act of April 30, 1864.

The declaration (transcript of record, page 3) is in debt on the settlement.

The plea is "nil debit."

The notes of trial (transcript of record, pages 5–111) contain the evidence which was submitted to the jury.

The Commonwealth offered the settlement and the report of the company on which it was based and rested. (Transcript, pages 5–8.)

The defence gave in evidence the specifications before referred to. (Transcript, page 8.)

Then follows a history of the bonds and the manner in which they are secured, etc. (Transcript, pages 8–104.)

Depositions of officers of the company. (Transcript, pages 106–110.)

These depositions were offered in order to prove that all the bonds (the interest whereon was taxed) were held by non-residents of Pennsylvania.

Viewed simply as a question of fact, it is submitted that the matter was left in such doubt that a jury might have found for the Commonwealth, on the ground that it had not been clearly shown what part, if any, of the bonds was held by non-residents at the time the tax was levied. It follows that even if a question had been *raised* under section twenty-five of the judiciary act, the verdict and judgment thereon do not necessarily show that question to have been *decided* in such a manner as to give jurisdiction to this court, or to have been decided at all.

Armstrong vs. Treasurer of Athens County, 16 Peters, 285. * * * * "*Fourthly*, It must be entered on the record of the proceedings in the appellate court in cases where the record shows

that such a point may have arisen and been decided that it was in fact raised and decided, and this entry must appear to have been made by the order of the court or by the presiding judge by order of the court, and certified by the clerk as a part of the record in the State court." * * * * * * Or, *sixthly*, it must appear from the record "that the question was necessarily involved in the decision, and that the State court could not have given the judgment or decree which they passed without deciding it."

The Victory, 6 Wallace, 384. The point raised must have been raised and decided adversely to the plaintiff in error to give jurisdiction.

Hamilton Co. vs. Mass., 6 Wallace, 636. Clear and necessary intendment that the question was raised, and must have been decided as claimed, is required.

Parmalee vs. Lawrence, 11 Wallace, 36. It must appear by the record that "such a question (*i. e.* one within section 25 of the judiciary act) must be necessarily involved in the decision, and that the State court could not have given judgment without deciding it."

There are no points of charges or prayers for instruction to the jury.

The charge of the court, (transcript, pages 111–115.)

It is contended that the charge of the court is no part of the record for the purpose of giving jurisdiction to this court, and that the record nowhere shows a question to have arisen and been decided so as to give jurisdiction here.

Medberry vs. State of Ohio, 24 Howard, 414. Whether this court has jurisdiction can be ascertained either from the pleadings or by bill of exceptions, or by certificate of the court. But the assignment of errors or the published opinion of the court cannot be reviewed for the purpose.

Armstrong vs. Treasurer of Athens Co., 16 Peters, 285. To give jurisdiction under judiciary act it must appear on the record itself to be one of the cases enumerated in that section, and nothing out of record certified can be taken into consideration. This must be shown, *first*, where by express averment or by necessary intendment in the pleadings in the case; or, *secondly*, by the direction given by the court and stated in the exception; or, *thirdly*,

when the proceeding is according to the law of Louisiana, and by the statement of facts and of the decision as usually made in such cases by the court; or, *fourthly*, it must be entered on the record of the proceedings in the appellate court, in cases where the record shows that such a point may have arisen and been decided, that it was in fact raised and decided, and this entry must appear to have been made by the order of the court, or by the presiding judge by order of the court, and certified by the clerk as a part of the record in the State court; or, *fifthly*, in proceedings in equity it may be stated in the body of the final decree of the State court from which the appeal is taken to this court; or, *sixthly*, it must appear from the record that the question was necessarily involved in the decision, and that the State court could not have given the judgment or decree which they passed without deciding it.

Hoyt vs. Shelden, 1 Black, 519. This court cannot review proceedings of a State court, on the ground that the judgment or decree violates the Federal Constitution, unless it appears from the record that the point was distinctly raised.

Farney vs Towle, 1 Black, 350. Point relied upon must have been raised and decided in State court.

Railroad Company vs. Rock, 4 Wallace, 180. The record must show that some one of the matters mentioned in twenty-fifth section of judiciary act was necessarily decided by the court, notwithstanding a certificate from presiding judge that such matters were drawn in question.

In *Lawler vs. Walker*, 14 Howard, 147, the court said, in dismissing a case for want of jurisdiction, in which there was a certificate for the State court that, "The twenty-fifth section requires "something more definite than a certificate to give jurisdiction. "The conflict of the State law with the Constitution of the Uni- "ted States, and a decision by State court *in favor of its validity* "*must appear on the face of the record* before it can be re-examined "in this court. It must appear in the pleadings of the suit, or "from the evidence in the course of the trial, in the instructions "asked for or from exceptions taken to the ruling of the court." To same effect the court also cited *Mills vs. Brown*, 16 Peters, 525.

The Victory, 6 Wallace, 384. The point raised must have been raised and decided adversely to plaintiff in error to give jurisdiction. This need not appear by express averment—enough if *record* shows by necessary intendment that the point was decided.

It is not sufficient that on fuller examination in Supreme Court, United States, with the aid of counsel there, it can be seen that it was a point which ought to have been raised and which might have been decided. "It is not sufficient to show that the question "might have arisen or been applicable to the case, unless it is "further shown *by the record* that it did arise and was applied by "the State court to the case," cited from 10 Peters, 368, with approbation.

Rector vs. Ashley, 6 Wallace, 143. The *opinions* of the State courts (even though required by a statute of the State to be filed among the papers in the case) constituting no part of the record of the cause in which they are given (as the court here decides that they did not) not being looked to for the question decided by those courts, and neither the pleadings in the case nor any other part of the record having raised the question of the statute, this court would not presume that it was in the case.

Walker vs. Villavaso, 6 Wallace, 124. Nothing out of the record certified to court can be taken into consideration. Not allowed to bring before court the fact that the judgment of the primary court affirmed by highest State court was given after the State was in rebellion, (although a fact of which the Supreme Court of the United States would take judicial cognizance,) it not appearing from the record that this want of authority in primary court under Federal Constitution was drawn in question and decided against below.

Hamilton County vs. Massachusetts, 6 Wallace, 636. It is not sufficient to show that the question might have arisen and been applicable to case in lower court, unless it appears in record that it did arise and was applied by State court in disposing of the controversy.

Clear and necessary intendment that the question was raised and must have been decided as claimed.

Furman vs. Nichol, 8 Wallace, 56. A case arising out of refusal of State of Tennessee to receive bank notes of Bank of Tennes-

see for taxes, alleged to be in violation of a statute of the State, claimed to be a contract with bank. Mandamus asked to compel tax collectors to receive notes. Jurisdiction objected to.

Held, under twenty-fifth section of judiciary act of 1789, a cause may be removed to S. C. U. S. whenever some one of the questions embraced in it was relied on by the party who brings the cause there, and when that right was denied to him by State court. The particular provision of the Constitution which is claimed to be violated need not be contained in the pleadings, if the record shows by express averment, or by clear and necessary intendment that the constitutional provision did arise, and that the court below COULD NOT have reached its conclusion and judgment without applying it to case in hand.

Gibson vs. Chouteau, 8 Wallace, 317. This court has decided, in 6 Wallace, 142, and 12 Wheaton, 117, that the opinion of the court cannot be resorted to for the purpose of showing that a question of Federal cognizance was decided by State court.

Argument of counsel cannot be regarded as a part of record of case, having no better claim "than the opinion of court, *which accompanies the record*," to be so regarded.

Worthy vs. the Commissioners, 9 Wallace, 611. Mandamus to compel county commissioners to instal plaintiff as sheriff of Moore county, N. C. The defendants refusing to accept him under section 3 of fourteenth amendment of Constitution of United States, because he was sheriff of county before Rebellion, and had taken oath of allegiance, and subsequently aided in Rebellion.

Defendants moved to dismiss writ of error as plaintiff in error had not set up below any claim under constitutional laws or authority of United States, but solely under laws of North Carolina.

Held, no jurisdiction, as there was no decision of State court against validity of any treaty or act of Congress or authority exercised under United States, nor in favor of validity of a statute of, or authority exercised under a State alleged to be repugnant to same. Not enough that brief of counsel set up right under fourteenth amendment, as said right was not set or specially claimed in State court.

Parmalee vs. Lawrence, 11 Wallace, 36. Plaintiffs alleged a contract for sale of real estate for $50,000, and interest at ten per

cent., and brought a bill for specific performance. Defendant alleges there was no contract to convey but a mortgage to secure loan of $50,000, and tendered a re-conveyance on payment of principal and interest, and filed cross-bill for foreclosure. Plaintiff asserted as before, and also set up usurious interest, and claimed the forfeiture under the laws of Illinois.

The record showed that the litigation resulted in a question as to rate of interest under laws of Illinois, and that neither in the pleadings, nor evidence, nor at the hearing in superior court, was any question raised as to constitutionality of the State statute regulating interest. This question first raised in Supreme Court on appeal, and a certificate from that court showed it was raised in argument and overruled.

Held, something more than this certificate needed to give jurisdiction under judiciary act.

The conflict of State law with Constitution, and a decision by State court in favor of its validity, must appear on face of record. It must appear in the pleading or evidence, in the instructions asked for, or from exceptions to ruling of court. Such a question must be necessarily involved in decision, and that State court could not have given a judgment without deciding it.

R. R. Co. vs. Rock, affirmed. Nelson, J., after citing language in *Lawler vs. Walker*, 14 How., 152, *R. R. Co. vs. Rock*, 4 Wallace, 177, says: "The certificate was as full in that case as in the pre-"sent, but it was the only evidence of the fact that a federal ques-"tion had been presented." * * * * "We will add if this "court should entertain jurisdiction upon a certificate alone in "the absence of any evidence of the question in the record then "the Supreme Court of the State can give the jurisdiction in every "case where the question is made by counsel in the argument."

Insurance Company vs. the Treasurer, 11 Wallace, 204. Mandamus asked to compel county treasurer to refund taxes paid by insurance company upon U. S. certificates of indebtedness, upon ground the taxes were declared illegal by S. C. U. S., and in pursuance of an act of New York Assembly claimed to authorize said return.

Mandamus refused by State courts, upon ground these certificates not exempt from taxation, and appeal to U. S. S. C.

It was claimed for plaintiff in error that the record showed no question, but whether certificates of indebtedness were or were not illegally taxed by State of New York in years 1863–4, the affirmative being maintained by insurance company and denied by treasurer, and that State courts had decided in favor of latter, thus giving jurisdiction. (The treasurer had not denied the illegality of tax, but insisted it had not been declared so.)

The court, without hearing counsel for defendants in error, *held:* That as it did not appear by the record that the State court had passed on legality or illegality of tax, and as they might have decided the case on the construction of a State statute, that they had no jurisdiction to review the decision of State court.

No opinion of Court of Appeals seems to have been written, at least none appeared. Bradley, J.: "And indeed it (constitutional question) ought to appear from the record, and not from any opinion of the court, that a federal question was raised in order to give this court jurisdiction of the case. For all that appears from the record the decision of the Court of Appeals may have been passed simply on its construction of the State statute." * * * * "Now we have held repeatedly that the construction of State statutes belongs to the State courts, and is not a federal question, which we can revise in a writ of error to a State court."

(*b.*) The charge does not show jurisdiction, even if it is considered a part of the record.

(1.) The questions relied on here are only alluded to *arguendo.* (Transcript, pages 112, 113.)

(2.) There is no bill of exceptions, but merely the following note at the end of the charge:

"To this charge the defendant, by its counsel, and also the At-
"torney General for the Commonwealth, did except and at the
"request of each this exception sealed." (Transcript, page 115.)

As questions, other than the constitutional one, were considered in this charge, it is impossible to tell definitely what part was excepted to.

(3.) The question involved is one of comity only, and does not come within section twenty-five of the judiciary act, because

The assignments of error likewise show no federal question to have been raised and decided. (Transcript, pages 118–122.)

The State levied a tax of three mills on the dollar of the bonds of the company, and required that amount to be retained by the company from the interest, and to be paid into the State Treasury.

The act of April 30, 1864, section 2, (pamphlet laws of Pennsylvania, 218,) directs that officers of corporations which pay interest to their depositors, bondholders or other creditors, "upon "which, by the laws of this Commonwealth, a State tax is im- "posed, shall, before payment of the same, retain from said de- "positors, bondholders or creditors the amount of State tax im- "posed by existing laws, and shall pay over the same to the State "Treasurer."

The act of April 29, 1844, section 32, (pamphlet laws, 497,) provides that "all real estate, * * * * also all mortgages, "money owned by solvent debtors, whether by promissory note, "penal or single bill, bond or judgment, * * * * and all "public loans or stocks whatsoever, except those issued by this "Commonwealth, * * * * shall be valued and assessed to "taxation for the purposes in this act mentioned, and for all State "and county purposes whatsoever."

Section 34 of the same act, fixes the amount of the tax at "three mills on every dollar of the value thereof."

The company was re-organized in Pennsylvania under a special act of Assembly for that purpose, approved March 31, 1860. Pamphlet laws of Pennsylvania, 498. (Transcript, page 48.)

The bonds were all issued under the authority given by said act after March 1, 1862.

The tax was apportioned—only such proportion thereof being charged as the length of the road in Pennsylvania bears to its whole length in that State and beyond it.

The Supreme Court of Pennsylvania decided that under these acts (1844 and 1864) the tax claimed by the State must be retained by the company and paid into the State Treasury.

It is contended here by the plaintiff in error:

1. That the Pennsylvania acts do not authorize the collection of this tax.

2. That it cannot be apportioned according to the length of the road in Pennsylvania, and that the road being security for the

bonds, and lying partly beyond Pennsylvania that State cannot tax the interest payable on these bonds, because, it is said, that this would be taxing property outside of her borders.

3. That nearly all the bonds are held out of the State, that they are *choses in action* and follow the domicile of the non-resident owner; that they have no *situs* in Pennsylvania, and the interest payable on them cannot be taxed there.

4. That the acts of Assembly are unconstitutional as being laws impairing the validity of a contract, *i. e.* the engagement of the company to pay a fixed rate of interest to its bondholders.

BRIEF OF ARGUMENT FOR DEFENDANT IN ERROR.

I. *As to the first objection, viz: That the acts of Assembly of Pennsylvania do not authorize the tax claimed thereunder*—it is a sufficient answer to say that the State courts have decided that these acts do impose the tax, and this being a question of the construction of State statutes the Supreme Court of the United States is bound by their decisions. Besides this court has expressly recognized the construction so put upon these statutes in the case of *Railroad Company vs. Jackson*, 7 Wallace, 266. Mr. Justice Nelson delivering the opinion of the court, said: "It has been argued for the plaintiff, that the acts of the Legislature of Pennsylvania, when properly interpreted, do not embrace the bonds or coupons in question; but it is not important to examine the subject; for, it is not to be denied; as the courts of the State have expounded these laws, that they authorize the deduction, and, it no other objection existed against the tax, the defence would fail.

II. *It is further objected that the tax if imposed at all cannot be apportioned according to the length of the road in Pennsylvania. It is submitted (a) that although the State acts do not in terms authorize any apportionment, yet inasmuch as the accounting departments in assessing the tax have uniformly apportioned it, and as their action has been confirmed by the State courts it becomes a part of the statutes with the same force as if contained in the very text of the laws, and that this court must therefore consider these laws as if they had by express words directed the tax to be apportioned in the manner indicated.*

M'Keen vs. Delancey's Lessee, 5 Cranch 32–3. Under act of 1715 of Pennsylvania, requiring deeds to be acknowledged before a justice of peace of county where lands lie, it had been an established practice to acknowledge deeds before a justice of the Supreme Court, although the act of 1715 did not authorize such a practice. This was held to be a correct exposition of the statute as it had long prevailed, and as such, binding on the Supreme Court of the United States.

CH. J. MARSHALL.

Elmendorf vs. Taylor, 10 Wheaton, 160. This court respects the decisions of the State courts upon their local statutes, in same manner as the State courts are bound by the decisions of this court in construing the constitution, laws and treaties of the Union.

The courts of every government have the exclusive authority of construing its local statutes and their construction will be respected in every other country.

CH. J. MARSHALL.

The language of the Chief Justice is very strong in this case on this point, and others it involved a question of title to real estate, yet the judge makes no distinction in his opinion, but includes all *statutes* in his declaration as to the binding force of local construction.

Shelby vs. Guy, 11 Wheaton, 361. The words "beyond seas" in statute of limitation construed according to decision of the State court. Although the same words may have received different construction in different States, "a fixed and received construction by a State in its own courts makes a part of the statute law."

Jackson vs. Chew, 12 Wheaton, 153. A case of adoption of local law of real property. This court adopts such local laws, whether founded upon construction of statutes of State or upon the unwritten law.

Bell vs. Morrison, Peters 359–60. A question of construction of statute of limitations of Kentucky. The statute substantially same as that of 21 James, ch. 16, with exception of substitution of five years for six. The English decisions were produced to illustrate true construction of statute. The court held them not to be conclusive authority. "If, therefore, upon examination it

"shall be found that the doctrines of the Kentucky courts, upon "this subject, are irreconcilable with those deduced from the sta- "tute of James, this court would, in conformity with its general "practice, follow the local law and administer the same justice "which the State court would administer between the same par- "ties." JUSTICE STORY.

Green vs. Neal's Lessee, 6 Peters, 291, construes statute of limitations of Tennessee according to latest decision of its Supreme Court over ruling, Wheaton, 476, and 2 Peters, 241, because the Supreme Court of Tennessee has finally decided the construction adversely to them, a rule of real property.

Nesmith vs. Sheldon, 7 Howard, 818. A question under constitution of Michigan, arising out of incorporation of a banking company, without necessary two-thirds vote in Legislature. The court held the act of incorporation void, because "the Supreme "Court of State had so construed its constitution, and it is the "established doctrine of this court that it will adopt and follow "the decisions of the State courts in the construction of their own "statutes where that construction has been settled by the decision "of their highest judicial tribunal."

CH. J. TANEY.

Rice vs. Railroad Company, 1 Black, 359. In ascertaining the meaning or effect of a State statute the rules of construction are borrowed from the common law, except in cases where the courts of the State have otherwise determined.

Sumner vs. Hicks, 2 Black, 533. An assignment for benefit of creditors held void by State court under its act of Assembly. "In "cases like this, involving the construction of a State statute, this "court is governed by the judgment of the highest judicial author- "ity of the State."

Leffingwell vs. Warren, 2 Black, 599. A real estate title case, statute of limitations pleaded, held. The courts of United States bound to recognize statute of limitations by judiciary act. "The "construction given to State statute by highest judicial tribunal "of such State is regarded as part of statute, and is as binding on "the courts of United States as the text. If the highest judicial "tribunal of the State adopt new views as to the proper construc-

"tion of a statute and reverse its former decisions, this court will "follow the latest settled adjudications."

Christy vs. Prigeon, 4 Wallace, 197. Land title case. The interpretation within the jurisdiction of a State of a local law becomes part of that law, as much so as if incorporated in the body of it by the Legislature. If different interpretations are given in different States to a similar law, that law, in effect, becomes, by interpretations, so far as it is a rule for action by this court, a different law in one State from what it is in another.

Gut vs. State, 9 Wallace, 35. The decision of the highest court of a State, that an act of the State is not in conflict with a provision of its Constitution is conclusive upon this court.

Insurance Co. vs. Treasurer, 11 Wallace, 204. "We have re- "peatedly held that the construction of State statutes belongs to "the State courts, and is not a federal question, which we can "revise in a writ of error to a State court. It is true, if a State "court gives such a construction to a State statute, as to make it "conflict with the Constitution or laws of United States, and sus- "tains its validity after giving it such construction, and thereby "deprives a party of his rights under the said Constitution or "laws, then a federal question is raised, and we can review the "decision on the point of the validity of the statute."

The two following cases have been cited by the plaintiff in error as limiting this rule, but it will be seen that, on the contrary, the general rule is strictly upheld by them:

Gelpecke vs. City of Dubuque, 1 Wallace, 206. It is the settled rule of this court, in the construction of State statutes and State constitutions, to follow the decisions of the highest State courts; but there have been heretofore, in the judicial history of this court, many exceptional cases, as doubtless there will be hereafter. In this case there were early decisions of State court overruled by late ones, and the earlier decisions were held right and later ones disregarded, the court saying, "It is insisted the court should follow the latest adjudication in cases involving construction of State statute, or constitution should be followed. * * * * * It cannot be expected that this court will follow every such oscillation, from whatever cause arising, that may possibly occur. The earlier cases are sustained by reason and authority, and are in

harmony with adjudications of sixteen States of the Union" So this was evidently one of the "exceptional cases" mentioned in opinion of court.

Justice Miller dissented, page 210. "The general principle is "not controverted by the majority, that to the highest courts of "the State belongs the right to construe its statutes and its con- "stitution, except where they may conflict with the Constitution "of the United States, or some statute or treaty made under it."

"But while admitting the general principle thus laid down, the "court says it is inapplicable to the present case, because there "have been conflicting decisions by the Supreme Court of Iowa "on this very point, &c."

Page 214.—Can see no difference between rule of property and a matter of contract, so far as this question goes.

Page 220.—The step taken by this decision "is a usurpation of "the right, which belongs to the State courts, to decide as a final- "ity upon the construction of State constitutions and State sta- "tutes."

Butz vs. City of Muscatine, 8 Wallace, 575.—Where a question involved in the construction of a State statute affects those remedies of creditors which are protected by the Constitution of the United States, this court will use its judgment on the meaning of a statute, regardless of the decisions of the State court.

Page 584.—"If the construction ultimately given to the sta- "tute had preceded the issuing of the bonds, and become the set- "tled law of the State before that time, the case, as regards this "point, would have presented a different aspect."

Miller, J., and Chase, C. J., dissented.

(b) *The apportionment* is of the *tax* and not of the *bonds*, *i. e.* the State imposes on the interest payable on each bond such a proportion of a tax of three mills on the dollar thereof as the length of the road in Pennsylvania bears to its whole length. In *Railroad Company vs. Jackson*, 7 Wallace, 266. Mr. Justice Nelson referring to this apportionment, says: "The Maryland portion is not liable for the payment of any specified part or quantity of these bonds thus taxed, but is liable, with all its interests, for the whole amount, the same as that portion of the road within the State of Pennsylvania. The bonds were an issue in the usual

way, by this Northern Central Railway Company, and the security given by mortgage on the entire line of the road. No portion of the bonds belong to one part more than to another. No severance was made of the bonds, and, therefore, none can be made in the taxation, with reference to the line within the respective jurisdictions of the States. If the tax is permitted as it respects one bond, it must be as it respects all."

Now the State does not tax one bond and exempt another, does not sever the bonds, and the objection above suggested is clearly not applicable.

Neither does Pennsylvania tax thereby property out of her jurisdiction, because even were the tax on the security and not on the interest on the bonds the apportionment made would exactly and equitably meet the difficulty, and it would only be a tax on so much of the security as is actually in Pennsylvania.

III. *For the defendant in error it is contended that the place of residence of the bondholders is immaterial.* The tax does not discriminate against non-residents, and farther it is levied neither on the security—the road—nor on the *chose in action*—the bond—but upon the interest payable by the defendant, a Pennsylvania corporation, which it is directed to withhold and pay to the State. This interest money is in the actual possession of the corporation, and it is undeniable that it might be made a garnishee and the money be attached in its hands by the creditors of the bondholders. Even if the tax were directly upon the *chose in action* the proposition advanced by the plaintiff in error that the thing taxed has no *situs* of its own, but follows the domicile of the non-resident holder and cannot be taxed elsewhere, is founded on a fiction of law which the authorities abundantly show is not applicable to questions of taxation. This fiction is only intended for the convenience of transfer and for distribution in the settlement of decedents estates. It prevails even in these cases only when not inconsistent with the local laws. The taxing power is an inherent attribute of sovereignty, and operates whenever either the person or the thing is within the jurisdiction.

In this case the thing—*i. e.* the interest money—has a tangible *situs* in Pennsylvania, and can be taxed there, and the State may compel the corporation to act as its agent in the collection of the tax.

In *R. R. Co. vs. Jackson*, 7 Wallace, 266, this court expressly declined considering this question. Mr. Justice Nelson there said: "Nor shall we inquire into the competency of the Legislature of "Pennsylvania to impose this tax, upon general principles, as we "shall place the objection upon other and distinct grounds, though "we must say that the tax upon the promissory note or bond, "given by the resident debtor, and the withholding of the amount "from the interest due to the non-resident holder, would seem to "be a tax upon such non-resident. It is not a tax of the money "lent, because that belongs to the resident debtor, for which he "is taxable; it is a tax on the security, the bond, which is in the "hands of the non-resident."

The following authorities fully sustain the positions assumed here for the defendant in error:

See *Story on the Conflict of Laws*, (Redfield,) § 550. "In the next place, let us consider the subject of jurisdiction in regard to property. It will be unnecessary to discuss the matter at large, as to personal property, since the general doctrine is not controverted, that, although movables are, for many purposes, to be deemed to have no *situs*, except that of the domicil of the owner, yet, this being but a legal fiction, it yields, whenever it is necessary, for the purpose of justice, that the actual *situs* of the thing should be examined. A nation within whose territory any personal property is actually situate has an entire dominion over it while therein, in point of sovereignty and jurisdiction, as it has over immovable property situate there. It may regulate its transfer, and subject it to process and execution, and provide for and control the uses and disposition of it to the same extent that it may exert its authority over immovable property. One of the grounds upon which, as we have seen, jurisdiction is assumed over non-residents, is through the instrumentality of their personal property, as well as of their real property, within the local sovereignty; hence it is, that whenever personal property is taken by arrest, attachment or execution within a State, the title so acquired, under the laws of the State, is held valid in every other State, and the same rule is applied to debts due to non-residents, which are subjected to like process under the local laws of a State."

Green vs. Vanbuskirk, 7 Wallace, 139.—"But this fiction (*i. e.*

situs of personal property) is by no means of universal application, and as Judge Story says, "yields whenever it is necessary for the purposes of justice that the actual *situs* of the thing should be examined;" * * * * and always yields to "laws for attaching the estate of non-residents, because such laws necessarily assume that property has a *situs* entirely distinct from the owner's domicile." If New York cannot compel the personal property of Bates (one of her citizens) in Chicago to contribute to the expenses of her government, and if Bates had the legal right to own such property there, and was protected in its ownership by the laws of the State; and as the power to protect implies the right to regulate, it would seem to follow that the dominion of Illinois over the property was complete, and her right perfect to regulate its transfer and subject it to process and execution in her own way and by her own laws."

National Bank vs. Commonwealth, 9 Wallace, 360. "But it is "strongly urged that it is to be deemed to be a tax on the capital "of the bank, because the law requires the officers of the bank to "pay this tax on the shares of its stockholders, whether the State "has the right to do this we will presently consider, but the fact "that it has attempted to do it, does not prove that the tax is "anything else than a tax on shares. It has been the practice of "many of the States for a long time to require of its corporations "thus to pay the tax levied on their shareholders. It is the com-"mon, if not the only mode of doing this in all the New England "States, and in several of them the portion of this tax which "should properly go as the shareholders contribution to local or "municipal taxation is thus collected by the state of the bank "and paid over to the local municipal authorities. In the case "of shareholders not residing in the State it is the only mode in "which the State can reach their shares for taxation. We are, "therefore, of opinion that the law of Kentucky is a tax upon the "shares of the stockholder. If the State cannot require of the "bank to pay the tax on the shares of its stock it must be because "the Constitution of the United States or some act of Congress "forbids it. There is certainly no express provision of the Con-"stitution on the subject."

"*St. Louis vs. Ferry Company*, 11 Wallace, 428. The controversy relates to taxes imposed by the city upon the ferry-boats of the defendants, used in conveying freight and passengers across the Mississippi river between the city of St. Louis and the opposite Illinois shore. The company was required to pay a specific sum for a license, and a tax was imposed upon its wharf-boat attached to the city landing. Both were duly paid. Payment of the taxes upon the ferry-boats was refused, and the several suits consolidated into the one before us, were instituted by the city to recover the amount claimed to be due.

"In the jurisprudence of the United States, a corporation is regarded as in effect a citizen of the State which created it. It has no faculty to emigrate. It can exercise its franchises extra-territorially, only as far as may be permitted by the policy or comity of other sovereignties. By the consent, express or implied of the local government, it may transact there any business not *ultra vires*, and "like a natural person may have a special or constructive residence, so as to be charged with taxes and duties or be subjected to a special jurisdiction." It is for the local sovereign to prescribe the terms and conditions upon which its presence by its agents, and the conducting of its affairs shall be permitted.

"It has been said that the power of taxation for the purposes of the Commonwealth is a part of all governmental sovereignty, and is inseparable from it. It is for the Legislature to decide what persons and property shall be reached by the exercise of this function, and in what proportions and by what processes and instrumentalities taxes shall be assessed and collected. The authority extends over all persons and property within the sphere of its territorial jurisdiction. When called into activity there can be no limit to the degree of its exercise except what is found in the wisdom of the law making power, and the operation of those conservative principles which lie at the foundation of all free government.

"Where there is jurisdiction neither as to person nor property the imposition of a tax would be *ultra vires* and void. If the Legislature of a State should enact that the citizens or property of another State or country should be taxed in the same manner as the persons and property within its own limits and subject to

its authority or in any other manner whatsoever, such a law would be as much a nullity as if in conflict with the most explicit constitutional inhibition. Jurisdiction is as necessary to valid legislative as to valid judicial action.

"In the eye of the law personal property for most purposes has no locality. *Mobilia sequntur personam; immobilia situm. Mobilia non habent sequelam.* In a qualified sense it accompanies the owner wherever he goes, and he may deal with it and dispose of it according to the law of his domicile. If he die intestate, that law, wheresoever the property may be situate, governs its disposal and fixes the rights and shares of the several distributees. But this doctrine is not allowed to stand in the way of the taxing power, in the locality where the property has its actual *situs*, and the requisite legislative jurisdiction exists. Such property is undoubtedly liable to taxation there in all respects as if the proprietor were a resident of the same locality. The personal property of a resident at the place of his residence is liable to taxation. Whether the personal property of a resident of one State, situate in another, can be taxed in the former, is a question which in this case we are not called upon to decide.

"Upon looking into the enactments under which the taxes in question were assessed, it is obvious that their purpose was not to tax the property through the proprietor, but to tax the things themselves by reason of their being 'within the city.' The point for us to decide, therefore, is whether they are covered by legal provisions under which the taxes were imposed. If the taxing officer acted without authority, the taxes were invalid, and the city is not entitled to recover in this action.

"The boats were enrolled at the city of St. Louis, but that throws no light upon the subject of our inquiry. The act of 1789, section 2, and the act of 1792, section 3, require every vessel to be registered in the district to which she belongs, and the fourth section of the former act and the third section of the latter, declare that her home port shall be that at or near which her owner resides. The solution of the question, where her home port is, when it arises, depends wholly upon the locality of her owner's residence, and not upon the place of her enrolment.

"The company has an office in Illinois. Its minor officers, such as engineers and pilots, lived in Illinois, where its real estate, including a warehouse, was situated. The company had also an office in St. Louis. Its president and vice president and other principal officers lived in the city, and there the ordinary business meetings of the directors were held, and the corporate seal was kept. The court found that the boats, when not in actual use, were laid up by the Illinois shore, and were forbidden by a general ordinance of the city of St. Louis, regulating ferries and ferry-boats, to remain at the St. Louis wharf or landing longer than ten minutes at a time. A tax was paid upon the boats in Illinois. Their relation to the city was merely that of contact there, as one of the termini of their transit across the river in the prosecution of their business. The time of such contact was limited by the city ordinance. Ten minutes was the maximum of the stay they were permitted to make at any one time. The owner was, in the eye of the law, a citizen of that State, and from the inherent law of its nature, could not emigrate or become a citizen elsewhere. As the boats were laid up on the Illinois shore when not in use, and the pilots and engineers who ran them lived there, that locality, under the circumstances, must be taken to be their home port. They did not so abide within the city as to become incorporated with and from a part of its personal property. Hence they were beyond the jurisdiction of the authorities by which the taxes were assessed, and the validity of the taxes cannot be maintained. In our opinion, the facts found are sufficient to support the judgment."

Denning Duer vs. Small, 7 *Am. Law Reg.*, *p.* 500, *et. seq.:* Statute of New York that all persons doing business in the State should be taxed upon their capital invested, and that *non-residents* shall be so taxed the same as if they were residents.

It was objected that personal property has no *situs* but that of its owner's domicile, and in this case the latter being a resident of New Jersey, the tax could not be collected. Held the tax was lawful.

Ingersoll, J., (U. S. C. C. Southern Dist. of N. Y.,) page 501: "The property of a non-resident within the limits of a State, no matter whether the property be real or personal, and no matter where the owner has his domicile, is equally protected by the laws with the property of the resident. There would appear, therefore, to be no good reason why it should not equally pay in taxes for such protection." * * * * "The laws of the State, by virtue of which the taxes complained of were imposed, declare that all personal estate invested by a non-resident owner in business within the State, (and who by such investing calls upon the State for protection to such property,) shall be assessed and taxed the same as if it were invested by residents, * * * * * pp. 502-3. If a non-resident does not

like to pay for such security and protection, he can withdraw his personal property from the State, and thus free himself from such payment. There is no law which compels him to put his property under the protection of the laws of a State of which he is not citizen or a resident. But while he asks and demands protection from the law, there is no good reason why he should demand that the property of the resident should pay for it; and there is no higher law of the United States which gives a non-resident a right to demand that the property of the resident citizen should pay for the protection afforded by the laws to the property of the non-resident. The equal immunities and privileges secured to the 'citizen of each State' within the 'several States,' does not demand such a requirement as this. * * * The chief reason urged why personal estate is not subject to the same rule (as real estate) is, that the rule of law is that personal estate follows the person of the owner, and that therefore it may be taxed in the State where the owner is domiciled. There is no allegation in the bill that the personal estate of the complainant, invested by him in business within this State, has been taxed in New Jersey, the State of his domicile. But if it were so taxed, it would not follow that it could not be taxed in the State where it actually was, and where protection was actually afforded it. If a non-resident owner of real estate should be taxed in the State of his domicile, on an assessment of what he was worth, which should include the value of the real estate which he owns in another State, or if he should be assessed upon his income, which included the rent of such real estate, that would be no good reason why the State in which the real estate was, and which actually affords the protection of its laws to it, and by which protection he would be able to receive rent, should not have the right to compel such real estate to contribute to the expense and cost of such protection actually afforded."

"Bank stock is personal estate. According to the rule of law, it follows, with other personal property, the person of the owner. Such stock, whether owned by a resident or non-resident, is usually taxed in the State where the bank is located. It is believed that laws taxing such stock are not obnoxious to the charge of being opposed to any constitutional law, either State or National. It would seem to be enough that the property of a non-resident, whether that property be real or personal, should be put upon an equality in respect to taxation with the property of a resident, without requiring that it should have greater privileges." Cites *Catlin vs. Hull*, 21 Vermont, 152.

Catlin vs. Hull, 21 Vermont, 152. Debts due from solvent debtors upon promissory notes, are personal estate within the statutes of this State.

In this case, one H., who resided in New York, owned certain property, consisting of debts due from solvent debtors, resident in this State, evi-

denced by promissory notes; and he appointed the plaintiff, who was also a resident of this State, his agent, to control and manage the property, and collect and re-loan from time to time, as he should think proper, and allowed the plaintiff a specified salary for so doing. And it was held that the Legislature of this State had power to enact a law, subjecting property so situated, to taxation, and that the property was taxable under the statute of October 30, 1844, and that it was property set to the list of the plaintiff as "agent" of H., in the town in which plaintiff resided.

Catlin vs. Hull, 21 *Vermont*, page 158: "It is insisted upon, * * * that the property of Hammond, of which the plaintiff has the care, as his agent, cannot be considered as legally existing in this State, and that this is an attempt to tax property when neither the property nor the owner is within the State, and within the jurisdiction of our laws. We think, however, that this doctrine is quite too refined and artificial to be put to any practical use."

Page 159: "But it is insisted further, that provided this property is to be considered as having its actual locality in this State, yet that personal chattels, and especially debts due, having no fixed *situs*, follow the person of the owner, and are considered as being legally situate where the owner has his *domicile;* and from this it is argued that personal estates, and especially debts, cannot be taxed by the State within whose jurisdiction they actually exist, if the domicile of the owner be elsewhere. It is undoubtedly true that by the general acknowledged principles of public law, personal chattels follow the person of the owner, and that upon his death they are to be distributed according to the law of his *domicile*, and in general, any conveyance of chattels, good by the law of his own *domicile*, will be good elsewhere. But this rule is merely a legal fiction, adopted from considerations of general convenience and policy, for the benefit of commerce, and to enable persons to dispose of their property at their decease, agreeably to their wishes, without being embarrassed by their want of knowledge in relation to the laws of the country where the same is situated. But even this doctrine is to be received and understood with this limitation, that there is no positive law of the country where the property is in fact, which contravenes the law of his domicile, for if there is, the law of the owner's domicile must yield to the law of the State where the property is in fact situate. We do not consider this doctrine in relation to the *situs* of personal chattels, and relating to its transfer and distribution, as at all conflicting with the actual jurisdiction of the State where it is situate, over it, or with their right to subject it, in common with other property of the State, to share the burthen of the government by taxation. Judge Story, in his 'Conflict of Laws,' page 19, says: 'The first and most general maxim or proposition is that which has been already adverted to, that every nation

possesses an exclusive sovereignty and jurisdiction within its own territory. The direct consequence of this rule is, that the laws of every State affect and bind directly all property, whether real or personal, within its territory, and all persons who are resident within it, whether natural born subjects or aliens, and all contracts made and acts done within it.' * * * Judge Story, in the same work, page 462, expressly states that the doctrine that the *situs* of personal property follows the *domicile* of the owner, is subject to this jurisdiction and right of the State, where the property is situate in fact. Chief Justice Marshall, in M'Cullough vs. Maryland, 4 Wheaton, 429, expressly recognizes this doctrine of dominion and sovereignty in the State, and further, that as a necessary incident to such sovereignty, and coextensive with it, is the power of taxation. Chancellor Kent also recognizes this doctrine to the fullest extent. 1 Kent, 426.

Hoyt vs. Tax Commissioners, 23 *N. Y.*, 226, 239, *p.* 232–3: "The possession of chattels is never vacant, as may be the case in respect to land. Where it is not in the hands of the owner it is usually held by some one else under some agency or trust, and the statutes which have been referred to are comprehensive enough to reach it in most cases when actually situated here, notwithstanding the foreign domicile of the general owner. All personal estate within the State, in the possession or under the control of a trustee, while the beneficial owner is a resident abroad, and in such a case, the assessment is to be against the person having the special interest or control. The actual *situs* and control of the property within the State is the condition which subjects it to taxation. The owner will of course be assessed if he resides here, and has it under his own control. If he resides in another State, the result is reached by charging his agent or trustee in the actual possession. And thus the different provisions of law which have been mentioned, appear to me to be in harmony with each other."

Page 236: "Thus we have a system apparently symmetrical and complete, according to which all personal estate, having an actual *situs* in this State, is brought within the sphere of taxation, without regard to the domicile of the owner, with only special exceptions dictated by policy of justice. And if this be the rule of taxation were the *situs* of the thing to be taxed, and the domicile of the owner are different, it is conceded that the opposite rule cannot and does not prevail. Proceeding on this rule, Louisiana and New Jersey very justly imposed a share of their public burdens on the property of the relator, situated in those States. The State of New York will do the same thing in respect to citizens of those States having property here, but it is not so unjust to its own citizens as to load them with double burdens, by proceeding on the opposite principle. Also, I am confident there is nothing in all our legislation which affords any ground for imputing to it such inconsistency and injustice."

Page 239: "The cases which I have referred to were determined by the highest courts in five States of the Union. They appear to be entirely pertinent to the question now before us, and I am not aware of a single decision to the contrary, except the one under review. These cases not only establish a construction of statutes framed like our own, but they all assert the principles of taxation, which lie at the very foundation of the subject. (See, also, Story's Confl. of Laws, pp. 19–462.) My conclusion, therefore, derived from the statutes, from these authorities, and from the reasons of a general nature which ought to influence the decision of such a question, is that the relator was not subject to taxation for his personal estate, having an actual situation in New Jersey and Louisiana."

City of Albany vs. Mekin, 3 Ind., 481: The share of the part owner of a steamboat, which runs on the Onio and Mississippi rivers, and occasionally touches at the city of New Albany, in the course of her voyages, is not liable to be taxed under the charter of said city, merely from the fact that such part owner is a citizen of that place.

The *situs* of personal property for the purposes of taxation does not follow the domicile of the owner.

Perkins, J.: "We do not think that for the purpose of taxation, a court is authorized to apply the rule of governing the personal estate of deceased persons, which regards its *situs* as following the domicile of the owner."

Faxton vs. M'Cosh, 12 Iowa, 529: Interest of non-residents in a railroad company in this State may be taxed here.

Sprague vs. Lisbon, 30 Conn: Machinery (being personal property) in a mill in this State, can be taxed though owned by a non-resident.

Taylor, Admr. vs. St. Louis County Court, 47, Missouri, 590, *Syllabus*, 2 *Revenue—Bonds taxed according to the situs of the property and not the domicile of its owner.*—Bonds of the "Masonic Hall Association" of St. Louis, in the hands of an administrator in St. Louis, are subject to taxation in this State, although the deceased owner of the bonds, at the time of his death resided in Illinois, and the bonds had been onced assessed in that State, and were only transferred to Missouri for the purpose of auxiliary administration. The actual *situs* of personal property, and not the domicile of its owner, determines under the law of what State it shall be taxed. Section 24, page 115, Wagn. Stat., providing that real estate shall descend according to the laws of its *situs*, and personal property shall be distributed according to the laws of the domicile of the decedent, has no application to the case under consideration. In no sense can it be said that the property represented by these bonds was in the possession of a foreign administrator, and it is immaterial that the bonds may have been transmitted

from such foreign administrator for the purpose of auxiliary administration.

Such bonds are not exempt from local taxation on the ground that the law makes no special provision for taxing such securities. Under our law bonds are left to be taxed like other property, where they can be reached, except that if the owner resides in the State they shall be taxed in the county of his residence.—(Wagn. Stat., 116, § 9.)

Bliss, J., page 600: "Our statute makes no special mention of this description of property, but provides that taxes shall be levied 'on all property real or personal, except, &c.' * * * * * The county authorities defend their assessment, and we have seen, upon the ground that these bonds are actually within the State, and subject to its laws, while the relator claims that as personal property and especially as *choses in action* they follow the domicile of the owner, and can only be taxed at the place of such domicile. It is evident they should not be assessed in both States, though an erroneous assessment in one State will not exempt them from a correct one in the other. We have no statute specially subjecting to taxation the bonds of our corporations wherever owned, and if they are liable at all, it is because they are here protected by our laws, and subject to the jurisdiction of our courts.

"That the *situs* of personal property is the domicile of its owner is a fiction, though color is given to its truth by the law in relation to the distribution of personal estates. If a citizen and resident of St. Louis own a farm in Illinois, no one pretends that the farm has any different location than if the owner lived upon it. But how with the cattle in its fields and stables, and the corn in the graneries? On what principle can they be said to belong to Missouri, so long as they are upon the farm? There is this difference, they can be removed to Missouri, while the farm cannot, but until removed, their *situs* is the farm, they help to swell the wealth of the locality, they are protected by its laws, and should be subject to its burdens. The same rule should be applied to bonds and notes, though from the different nature of the property, their actual *situs* may be more doubtful. But if it be established, although not the residence of their owner, the same result should follow as to them. Thus, if money be left by a non-resident in the hands of an agent for investment and loan, the money itself, the instruments taken for it, and the various forms which it assumes, so long as they remain in the hands of such agent, are local property, and upon every principle should be subject to the public burdens imposed upon other local property of the same kind. What difference does it make in benefits derived by the owner from the protection afforded this property by the administration of the law, whether he live near it or abroad? or what difference in the expense of such protection?

"This view has been recognized by all the courts, but I will refer to only a few cases. In Catlin vs. Hall, 21 Verm., 152, one Hammond was a resident of New York, and had placed promissory notes in the hands of the plaintiff in Vermont, as his agent, to collect, re-loan and manage for his benefit. They were assessed at the locality of the agent, and he brought suit to test the legality of the assessment, which was fully sustained by the court, upon the principle that the property was invested in the State, under the protection of the laws, and should contribute to the support of the government which protects it. In the People vs. Home In. Co., 29 Cal., 533, certain State bonds had been deposited by the defendant, a foreign corporation, as security for its liabilities, and were subjected to local taxation. The assessment was sustained, the court holding "the actual *situs* and control of the property within the State to be the condition which subjects it to taxation." The case of Hoyt vs. Commissioners of Texas, 23 N. Y., 224, arose out of an attempt to assess taxes against the owner, who was a resident of New York, upon his personal property in New Orleans. The court of appeals held the assessment as to tangible property to be illegal, but declined to give an opinion in regard to choses in action. But in the Supreme Court, in the People vs. Gardner, 51 Barb., 352, it was held that a resident of New York was not liable to be assessed and taxed at his residence, upon securities taken and held by his agents in other States. This court, so far as the question has come before us, has sustained the same view, and in St. Louis vs. Wiggins Ferry Co., 40 Mo., 580, Judge Holmes thus states the general doctrine. "The property of either a resident or non-resident is taxable here, if it be found situate within the local jurisdiction, whether it be in the hands of the owner himself or of his agents. The only question then to be determined is, whether the bonds belonging to the relator as administrator, are so located in Missouri as to be taxable here, or whether they should be assessed at the residence of the deceased. The fact that they have been once assessed at the latter place, cuts no figure for the authorities as the true *situs* cannot be thus deprived of the jurisdiction." In regard to the law governing the disposition of the property of a deceased person, our statute provides (Wagn. Stat., 115 ch. 125, § 24,) that real estate shall decend according to the laws of its *situs*, and that personal property shall be distributed according to the laws of the domicile of decedent, thus embodying the existing law, rather than declaring a new rule. The provision, it is claimed, should govern the location of the personal property of the estate, for the purpose of taxation. If so, the rule should apply to all kinds of personal property, so that cattle, horses, steamboats and building upon leased ground, that may never have been within the jurisdiction of the State, containing the domicile of decedents, could be alone taxed at that place. But the law upon this subject has no applica-

tion to the question under consideration. In fixing the rights of distributees of property, whose *situs* is changeable, and may be under one jurisdiction at one time and elsewhere at another, the law of some locality must be chosen, and it is very proper to govern its distribution by the law known to the deceased. But the principles governing the question of taxation, are, as we have seen, very different, and we are only required to ascertain the actual location of the property at the time of assessment.

"Administration of so much of the estate of a non-resident as is found within our jurisdiction is auxillary, in that it becomes the duty of the administrator to transmit to the representative of the estate of the domicile any balance remaining after full administration. Yet, so far as local creditors and local distributees are concerned, the administration is complete. Until such balance be transmitted the local administrator has full posession of all the property, and the foreign administrator has no right to intermeddle. In no sense can it be said to be in the possession of the foreign administrator, and it does not matter whether or not it may have been transmitted, or rather the evidence and representation of it in the shape of bonds and notes, from such administrator to the local one. When transmitted for the purpose of administration it becomes a local estate, it comes within the jurisdiction of the tribunals of the domicile of the local administrator, it seeks the protection of its laws and the enforcing process of its courts, and until the closing up of the local administration it can have no other *situs*."

People vs. Home Insurance Company, 29 Cal., 533: Personal property in California belonging to a non-resident, may be assessed to such owner, notwithstanding he is a non-resident. If personal property in this State, belonging to a non-resident, is in the possession of a trustee or agent, it may properly be assessed to the agent or trustee in possession, 23 N. Y., 225, cited and approved—*Catlin vs. Hull*, 21 Vermont, 156, and *Hoyt vs. Com. Taxes*, p. 538. *Sawyer, J.*: "But it is claimed that these bonds (i. e. bonds of the State of California, owned by the Home Insurance Company, a New York corporation, and deposited with a banker in California as security for persons dealing with the company in that State) are mere evidences of debt, having no intrinsic value, that they are mere representatives of a debt owned in New York; that they have no *situs* apart from the domicile of the owner, which is located without the State, and that, therefore, they do not constitute property within this State. It is true, as a general principle, that personal property follows the owner, having no *situs* apart from the owner, and is subject to the law of his domicile; but this is a fiction of law adopted for the purposes and incidents of contracts and descents. It may still, for the purposes of taxation and judicial proceedings, be affected by the law of the place where it is in fact situate. This general principle applies to all personal property, whether corporeal or incorporeal. Story

says: 'In the next place let us consider the subject of jurisdiction in regard to property. It will be unnecessary to discuss the matter at large as to personal property, since the general doctrine is not controverted, that although movables are, for many purposes, to be deemed to have no *situs* except that of the domicile of the owner, yet, this being but a legal fiction, it yields whenever it is necessary for the purposes of justice that the actual *situs* of the thing should be examined. A nation within whose territory any personal property is actually situate, has as entire dominion over it while therein, in point of sovereignty and jurisdiction, as it has over immovable property situate there. It may regulate its transfer and subject it to process and execution, and provide for and control the uses and disposition of it, to the same extent that it may exert its authority over immovable property. One of the grounds upon which we have seen jurisdiction is assumed over non-residents, is through the instrumentality of their personal property, as well as of their real property, within the local sovereignty. Hence it is that whenever personal property is taken by arrest, attachment or execution within a State, the title so acquired under the laws of the State is held valid in every other State, and the *same rule is applied to debts due to non-residents, which are subjected to the like process under the local laws of a State.*'—(Story on Con. of Laws, sec. 550.")

People vs. Gardner, 51 *Barbour*, 352: A resident of this State is not liable to be assessed and taxed here for his capital invested in loans in other States, upon securities taken and held in those States by his agents.

Whether the owner of property thus situated is liable to be assessed here for it, depends upon the question whether it can be properly and legally held to be within the State at the time of the assessment. As such property has no actual location or *situs* within the State, notwithstanding the owner resides here, it is not subject to taxation. *Catlin vs. Hull*, 21 Vermont Rep., 152, and *Hoyt vs. Commissioners of Taxes*, 23 N. Y., 238, cited and approved. *Daniels, P. J.* It is clear that the property on account of which the assessment was made had no actual location or *situs* within the State. For the moneys loaned and the securities taken and held for the payment of such loans were actually in the States of Wisconsin and Illinois. So far as they were things having a substantial existence, they were so in those States, and not elsewhere. As such they were within the sole protection of the laws of those States. The validity of the agreements under which the loans were made, the protection of the securities taken for their payment, and the remedies provided for enforcing the securities, depended alike upon such laws. In neither respect did the relator derive any benefit whatever from the laws of this State. And the consideration from which the right to impose taxes has been theoretically derived, has therefore no foundation for its support so far as the assessment in

controversy is concerned. Under that theory the government extending the security of its protection to property is justly entitled by way of taxes upon it to its ratable equivalent of the expenses incurred for the protection afforded to it. In this instance that was not done and could not be done by the government of this State. But it was done by the government of the States in which the loans were made, and the recompense for that service should justly be returned to the authorities of such States. This State has performed nothing whatever for which such recompense can be properly demanded by its authorities. But even though the assessment may have no just theory in fact to rest upon, the learned counsel, who with very great zeal and ability argued this cause on the part of the defendants, claimed that it was legal and valid because the statute of 1851 declared that the assessment should be made for all personal estate owned by the person assessed. Although this language is general and broad enough to include all the personal estate of the person assessed wheresoever it may be situated, the court of appeals, in the case already referred to, have held that it should not be so construed, but that its terms must be so far restricted as to confine them to property within this State. The fact, therefore, that the property was owned by the relator was not alone sufficient to justify the action of the assessors. To produce that result the additional circumstance was equally essential, that the property should be within this State. Under this construction the original section contained in the revised statutes, and the second section of the act of 1851, must be read together, and then, instead of providing generally that the owner shall be assessed in the town or ward where he resides, for all personal estate owned by him, that section will provide that he shall be assessed for all personal estate owned by him within this State. When thus read, this is the plain and obvious meaning of the law.—(1 R. S. 5th ed., 905, S. 1; 908, § 5.)—In order to avoid the consequences of this exposition of the statutes, the same learned counsel very earnestly urged upon the consideration of the court, that as this property consisted of what the law denominates choses in action, being obligations of an intangible nature, it was within the State because the relator was its owner. That from its nature it must follow the person of him to whom the obligations are owing. By a legal fiction the personal estate of the owner has, for some purposes, been deemed to follow its owner. But in the adjustment of systems of taxation this fiction has been very generally rejected, on the ground that it was productive of unjust consequences, and other cases exist where for a like reason its application has been desired. As to visible and tangible personal property capable of having an actual *situs*, this fiction has not been allowed to prevail, so as to render such property liable to taxation when it was not within this State, even though the owner was here, (the People vs. The Commis-

sioners of Taxes, 23 N. Y. Rep., 224,) and the reasoning of the judge, through which that conclusion was reached, is equally applicable to the present case as it was to that, though it was not intended to be applied to a case of this description."

The following is a brief review of the cases cited by the plaintiff in error in this part of the case:

State of Nevada vs. Earle et al., 1 *Nevada Reports*, 396. This case, rightly considered, is an authority in favor of the Pennsylvania tax, and not against it.

Here the tax was on the *chose in action*, *i. e.*, on the *note itself*, secured by a mortgage on property in Nevada. The court held, that as this note belonged to a non-resident, and was actually in the possession of that non-resident in California, that it—the note—could not be taxed in Nevada, the ground taken being that the thing taxed had no tangible existence in the State of Nevada. But the court expressly declared that "each tangible piece of real or personal property within the State" might be taxed. Pennsylvania does not tax the *chose in action*, *i. e.*, the bond itself—but it taxes "tangible personal property," *i. e.*, the interest about to be paid on the bonds—which "tangible personal property" is actually "within the State," *i. e.*, in the physical custody of the treasury of the plaintiff in error, a Pennsylvania corporation.

City of Davenport, vs. M. and M. R. R. Co., 12 Iowa, 541, *et. seq.* This case only decides what was *the meaning* of a State statute.

And it was held that it was not the *intention* of the Legislature to impose the tax claimed by the city of Davenport. The question, whether had the tax claimed been really imposed, would it have been legal? was not before the court.

The tax was directly on the mortgage itself, which was in the custody and belonged to non-residents, and not on the interest, payable by the State corporation, and in its possession. The broad question involved in the construction of the Pennsylvania statute, did not arise in the case.

On page 546, the court say: "What property have these defendants in the mortgages given? What interest have they that could be levied upon, and sold or transferred? It is the value of the thing to the owner that the taxing power aims to reach, not that which is invisible or intangible," meaning the *chose in action*, or piece of paper called a mortgage, evidencing the debt and in the possession of the non-resident. Under the reasoning in this case, the Pennsylvania tax being on something "tangible," and actually in the treasury of the State corporation, and so capable of being "levied upon and sold or transferred" in Pennsylvania, would be subject to taxation there.

The State vs. Ross, 3 *Zabriskie*, 519, *et. seq.* Here, too, the tax claimed was upon the *chose in action*, the bonds themselves. The fact that the owner, a resident of Georgia, was temporarily in New Jersey, did not make it lawful to tax that *chose in action*. It was held that personal chattels actually in the State, though owned by non-residents, are subject to State taxation.

Latrobe vs. Mayor, &c., Baltimore city, 19 Maryland, 20. Here also the tax claimed was levied directly upon the mortgage itself.

People vs. Park, 23 Cal., 138. Here the tax was again on the mortgage itself, and the question was in which county of the State it should be paid, whether in that of the mortgagee or in the one where the land was situated.

People vs. Eastman, 25 Cal., 603. In this case the tax claimed by Mariposa county was assessed directly on a judgment obtained there by a resident of another county. Same as *People vs. Park*.

People ex. rel. Hoyt vs. Com. of Taxes, 23 N. Y., 225. Here the tax claimed was assessed in New York against one domiciled in that State for capital invested in business in New Orleans, and respect to chattels upon his farm in New Jersey. *Held* illegal.

The reasoning in this case, pages 226 to 230, is strongly in favor of the Pennsylvania tax, and shows the fallacy of applying the legal fiction that the owner fixes the *situs* of personal property to the consideration of a question of this nature.

Ogden vs. Saunders, 12 Wheaton, 213–369. This has no possible bearing on the case.

It was held here that a discharge under a State insolvent law could not be pleaded out of the State, nor against a non-resident creditor suing in the United States Circuit Court.

Hood's Estate, 9 Harris, 106. Here testator was domiciled in Cuba at the time of his death. The Register of Wills of Philadelphia adjudged the payment of collateral inheritance tax on legacies to persons living in Philadelphia, which legacies were payable out of crops of testator's sugar plantation, situated in the island of Cuba. The register's court held that the legacies in question were not subject to collateral inheritance tax in Pennsylvania, and the Supreme Court affirmed the decision. Here neither the person nor the property was within the jurisdiction of the State.

Short's Estate, 4 Harris, 63. Here it was decided that all the personal property of a decedent domiciled in Pennsylvania was subject to a collateral inheritance tax there without regard to its actual *situs*. But this was upon the express ground that for convenience of distribution of decedent's estates, the law of the domicil governs and gives a fictitious *situs*, and this by the universal acquiesence of all States, and for the reason that it is necessary to effect distribution according to a uniform rule.

M'Kean vs. County of Northampton, 13 Wright, 519. M'Kean was domiciled in Pennsylvania, and owned shares of stock in a manufacturing company in New-Jersey. It was held,

1. That this gave him no ownership in the real and personal property of the corporation there.

2. That the shares of stock in his hands in Pennsylvania were subject to taxation here.

IV. *The Pennsylvania acts do not impair the obligation of the contract of the company with its bondholders.* The corporation pays no less interest, but a part of it is diverted to the State as a tax on the bondholder, who is made in common with the citizens of the State to pay for the value given to his property here through the grant of the franchises of the corporation and the protection afforded to it by the State. This company was reorganized in Pennsylvania under the act of Assembly of March 31, 1860, and the bonds in question were issued thereunder after March 1, 1862. [See transcript, pages 48 and 67.]

(*a.*) *The amendment to the Constitution of Pennsylvania, adopted in* 1857, *allows the Legislature* to "alter, revoke or annul any charter of in- "corporation thereafter granted, whenever, in their opinion, it may be in- "jurious to the citizens, * * * * in such manner, however, that no "injustice be done to the corporators." If the Legislature may lawfully destroy this corporation, certainly its power to tax it and its bondholders necessarily follows. Even an express agreement in the act of incorporation limiting the taxing power would be void.

(*b.*) *At the time the corporation was re-organized*, (1860,) *the act under which this tax becomes payable*, (April 29, 1844,) *was in full force, and was notice to the future bondholders.* It will be observed that the act of April 29, 1844, imposes the tax, and the act of April 30, 1864, simply regulates its collection by imposing that duty on the corporation.

(*c.*) *Aside from the Constitutional and statutory provisions of Pennsylvania in force when these bonds were issued*, the tax in question cannot, on general principles, be said to impair the obligation of a contract, and none of the decisions made with reference to the constitutional prohibition in this regard will sustain such a proposition. On the contrary they fully admit the taxing power of the States.

Osborn vs. U. S. Bank, 9 Wheaton 859. The question was as to power of the States to tax the bank.

The Court said: "The foundation of the argument in favor of such right is laid in the supposition that the corporation was originated for the management of an individual concern to be founded upon contract between individuals having private trade and private profit for its great end and principal object.

"If these premises were true, the conclusion drawn from them would be inevitable. This mere private corporation engaged in its own business with its own views, would certainly be subject to taxing power of State, as any individual would be."

[The bank was held exempt, because a public institution, a part of the Government.]

Providence Bank vs. Billings & Pittman, 4 Peters, 514. In November, 1791, the Legislature of R. I., chartered an association which had been formed to carry on a banking business, under the name of "President, Directors and Company of the Providence Bank."

In 1822, the Legislature of R. I., passed an act taxing the capital stock of the banks actually paid in.

The Providence Bank brought an action of trespass against the officers levying the tax. It was decided in favor of defendants. But this court reversed judgment and held—the tax did not impair the obligation of a contract.

Page 560—The plaintiffs argued: "The charter authorizes the bank to employ its capital in banking transactions for the benefit of the stockholders. It binds the State to permit these transactions for this purpose. Any law arresting directly the operations of the bank would violate this obligation and would come within the prohibition of the constitution. But as that cannot be done circuitously which may not be done directly, the charter restrains the State from passing any act which may indirectly destroy the profits of the bank. A power to tax the bank may unquestionably be carried to such an excess as to take all its profits, and still more than its profits for the use of the State, and consequently destroy the institution. Now, whatever may be the rule of expediency, the constitutionality of a measure depends not on the degree of its exercise, but on its principle. A power, therefore, which may in effect destroy the charter is inconsistent with it, and is impliedly denounced by granting it. Such a power cannot be exercised without impairing the obligation of the contract. When pushed to its extreme point or exercised in moderation, it is the same power and is hostile to the rights granted by the charter."

Ch. J. Marshall denied this propositiion.

Page 561: "It would seem that the relinquishment of taxing power is never to be presumed."

Page 562: "Land, for example, has in many of the States, perhaps in all, been granted by the government. This grant is a contract, the object of which is that the profits issuing from it shall enure to the benefit of grantee. Yet the power of taxation may be carried so far as to absorb these profits. Does this impair the obligation of a contract?"

The power of taxation operates on all the persons and property belonging to the body politic. This principle has its foundation in society itself.

Gordon vs. Appeal Tax Court, 3 Howard, 133. The corporate property of bank is separable from its franchise, and may be taxed unless there is a special agreement to the contrary.

(This was a case where the State agreed not to lay any further burthen on the banks upon condition that they made a road and paid a school tax.

P. W. & B. R. R. vs. Maryland, 10 Howard, 393. There is no reason why the property of a corporation should be presumed to be exempted, or should not bear its share of the necessary public burthens.

The court has held on several occasions that the taxing power is never presumed to be relinquished, it must be expressed in *clear and unambiguous terms.*

Jefferson Branch Bank vs. Skelly, 1 Black, 436. The rule of construction is strict against the corporators, and in favor of the public, and neither the right of taxation nor any other power of sovereignty will be held to have been surrendered, unless such surrender has been expressed in terms too plain to be mistaken.

Gilman vs. City of Sheboygan, 2 Black, 510. Where a State Legislature authorizes a city to borrow money, issue bonds and tax all the property in the city to pay it, this is not a contract with the bondholders that the State shall not afterward exercise her power to modify the taxation, or exempt portions of the property from taxation.

The city under an act of the Legislature issued bonds, and it was provided that a tax should be levied upon *all* the taxable property of the city for payment of said bonds. The plaintiff in error argued that the bonds were issued and taken upon the faith of that act, and that its provisions were a contract with the bondholders.

The Legislature subsequently enacted that only the real estate should be taxed to pay said bonds and interest.

The fact that a State, by act of Legislature, has stripped herself of any portion of her sovereignty is not to be assumed, unless the language is too clear to admit of doubt.

Society for Savings vs. Coite, 6 Wallace, 606. Unless exempted in terms which amount to a contract, the privileges and franchises of a private corporation are as much the legitimate subject of taxation as any other property of the citizens, which is within the sovereign power of the State.

Affirms the decisions that the taxing power is never *presumed* to be relinquished.

Curtis vs. Whitney, 13 Wallace, 68. A statute does not necessarily impair the obligation of a contract because it may affect it retrospectively, or

because it enhances the difficulty of performance to one party, or diminishes the value of the performance to the other, provided that it leaves the obligation of performance in full force. A statute which requires the holder of a tax certificate, made before its passage, to give notice to an occupant of the land, if there be one, before he takes his tax deed, does not impair the obligation of the contract evidenced by the certificate, which stated that she would "be entitled to a deed of conveyance of said land in three years from that date, unless sooner redeemed according to law."

Miller, J: "Nor does every statute which affects the value of a contract impair its obligation. It is one of the contingencies to which parties look now in making a large class of contracts, that may be affected in many ways by State and National legislation. For such legislation, demanded by the public good, however it may retract on contracts previously made and enhance the cost and difficulty of performance, or diminish the value of such performance to the other party, there is no restraint in the Federal Constitution so long as the obligation of performance remains in full force."

V. *The power to tax existing, it cannot be restrained by any court, and the prudence of its exercise is not a judicial question.*

People of New York vs. The Tax Commissioners, 2 Black, 620: "The taxing power, so far as it is reserved to the States and used within constitutional limits, cannot be controlled or restrained by this court, the purdence of its exercise not being a judicial question."

St. Louis vs. The Ferry Company, 11 Wallace, 429: "When called into activity there can be no limit to the degree of its exercise, (i. e. the taxing power,) except what is found in the wisdom of the law making power, and the operation of those conservative principles which lie at the foundation of all free governments."

VI. *The tax on the bonds or interest thereon of the plaintiff in error is not forbidden by any provision of the Constitution of the United States, or any statute thereof.*

VII. *The laws of most of the States are similar in this regard to those of Pennsylvania.*

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